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OFFICE OF THE MAYOR  
SAN FRANCISCO



WILLIE LEWIS BROWN, JR.

TREASURE ISLAND PROJECT  
410 AVENUE OF THE PALMS  
BUILDING 1, 2ND FLOOR  
TREASURE ISLAND  
SAN FRANCISCO, CA 94130  
(415) 274-0660  
FAX (415) 274-0299

TREASURE ISLAND DEVELOPMENT AUTHORITY  
MEETING AGENDA

Wednesday, January 10, 2001 1 P.M.

Room 400, City Hall  
1 Dr. Carlton Goodlett Place

Willie L. Brown, Jr., Mayor

DIRECTORS

John Elberling, Vice-Chairman  
William Fazande  
Susan Po-Rufino  
Doug Wong

Gerald Green  
Anne Halsted  
James Morales

Annemarie Conroy, Executive Director

London Breed, Commission Secretary

DOCUMENTS DEPT.

JAN - 4 2001

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ORDER OF BUSINESS

1. Call to Order and Roll Call
2. Approval of Minutes (*Action item*)
3. Communications (*Discussion item*)
4. Report of the Treasure Island Project Director Annemarie Conroy (*Discussion item*)
  - Report on access to Treasure Island including public use last month
  - Report on public use for the Treasure Island Chapel
  - Status of environmental clean up
  - Report on short-term leases
  - Report on San Francisco-Oakland Bay Bridge/Caltrans issues
  - Report on Treasure Island community issues
  - Report on Citizens Advisory Committee
  - Report on TIHDI
  - Financial Report
  - Legislation/hearings affecting Treasure Island
5. General Public Comment (*Discussion item*)
6. Ongoing Business by Directors and Introduction of New Business by members (*Discussion Item*)
7. Resolution authorizing and endorsing submission of a grant application to the Economic Development Administration for \$202,500 for the development of plans and specifications for the seismic strengthening of the Causeway (*Action Item*)
8. Adjourn

*Relevant documents such as resolutions, staff summaries, leases, subleases are available at the Treasure Island Project Office and the Government Information Center at the Main Library, 100 Larkin Street. Public comment is taken on each item on the agenda.*

#### **MEETING AGENDAS NOW AVAILABLE ON E-MAIL**

If you would like to receive TIDA meeting agendas by e-mail, rather than through U.S. Postal Service mail, please send your name and e-mail address to [TIDA@ci.sf.ca.us](mailto:TIDA@ci.sf.ca.us).

#### **Disability Access**

The Treasure Island Development Authority will meet at City Hall, 1 Dr. Carlton Goodlett Place. City Hall is accessible to persons using wheelchairs, and others with disabilities. For American Sign Language interpreters or use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please telephone 554-6789 at least 72 hours before a meeting.

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#### **TREASURE ISLAND WEBSITE**

Check out the Treasure Island website at [www.ci.sf.ca.us/treasureisland](http://www.ci.sf.ca.us/treasureisland) to find out about activities and facilities on Treasure Island, special events venues for rent, or to review the Treasure Island Development Authority's agendas and minutes.











**Minutes of Special Meeting**  
**Treasure Island Development Authority**  
December 21, 2000

Call to Order: 2:10 PM in Room 400 in City Hall

Roll Call: Present: Susan Po-Rufino  
James Morales  
William Fazande  
Anne Halsted  
Gerald Green (2:12 PM)  
Doug Wong (2:15 PM)

Excused: John Elberling, Vice-Chair

2. Approval of Minutes: The minutes of November 8, 2000 were approved unanimously.

3. Communications: London Breed, Commission Secretary reported that a letter was received (section 3 of binder) from Clarissa Harris Adamson, board member of the TI Sailing Center Foundation, which thanks the members of TIDA and discusses the sailing program. It goes on to say that the sailing program has assisted several programs specifically focused on youth on TI including TIHDI and Boys and Girls Club.

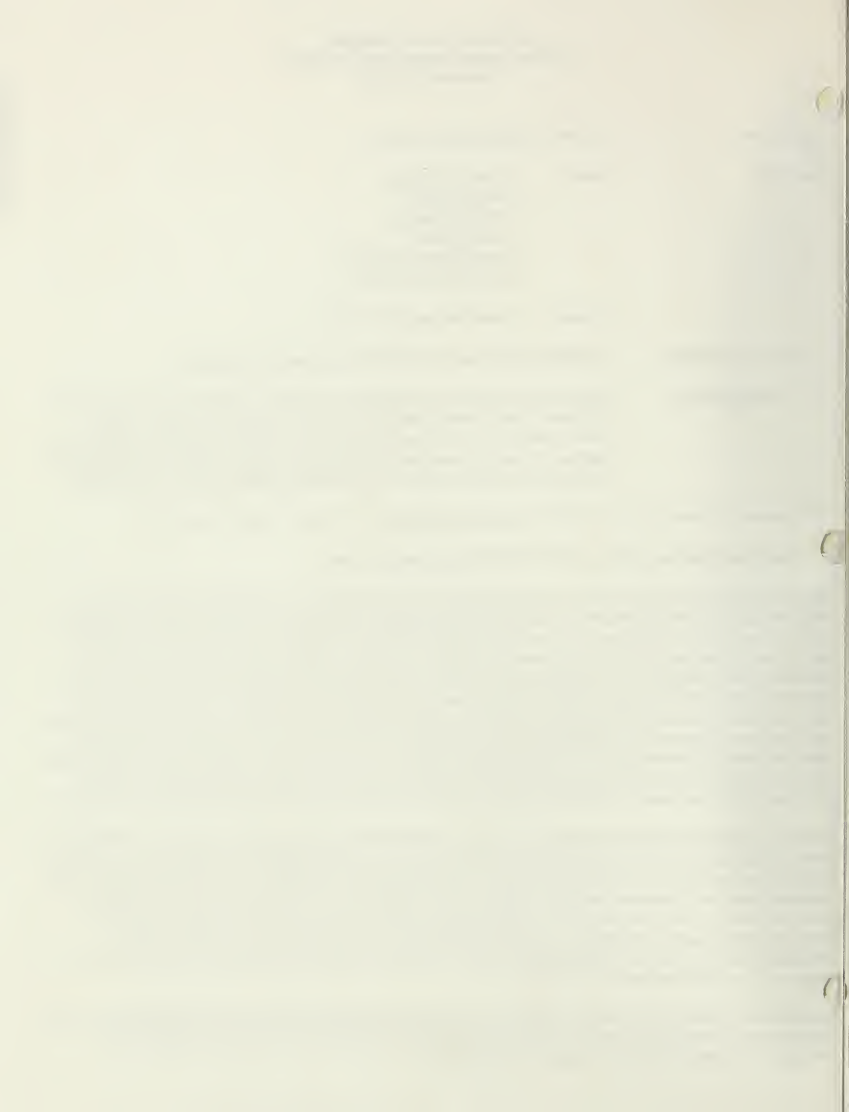
\*\*\* Annemarie Conroy, Executive Director asks the Authority to call items 7, 9 and 10 out of order.

7. Resolution approving bylaws for the TI/YBI citizen's advisory board.

Stephen Proud, Development Director, replied that Item 7 is a consideration of the bylaws for the Citizen's Advisory Board that was appointed by the Mayor and the Board of Supervisors. Staff put together a proposed set of bylaws that was distributed to the Advisory Board. The initial meeting of the Advisory Board was on Nov 13, and at that meeting the by-laws were reviewed by the members of the CAB. The bylaws outline the guidelines under which the CAB would operate. There is a purpose section, which outlines the purpose of the Board. It provides them with the authority to make recommendations to the Authority concerning the review and implementation of the draft reuse plan, policies and objectives related to interim reuses on the base and any other matters of importance. It outlines duties of the officers, who they will be, election/removal procedures, dates and times of the meetings. The CAB decided to meet on the third Thursday of every month at 6 PM at the Job Corps Center on TI. The CAB started out with 25 members, now down to 23; a quorum is 12 of the 23 members. If anyone misses 4 meetings out of the 12 they will be removed, whether or not absence is excused.

Mr. Green asked who initiates the removal. Mr. Proud replied that it would be the chairperson of the CAB. Mr. Proud added that the Sunshine Ordinance, the Brown Act and any other applicable laws that apply to any other body that meets in the city & county of SF applies to the CAB. Mr. Proud informed the Authority that the CAB members made two changes to the bylaws. One change in Article 3, under officers, in section 2 instead of saying the officers would be elected at the January meeting it now says they will be elected on or before the February meeting unless extended by a two-thirds majority. The other change is under article 4, under meetings, there is a whole new section called section 6 which allows items to be added to the agenda with the approval of two-thirds majority of the CAC.

Donnell Choy, Deputy City Attorney, replied that the bylaws are written to be automatically self-enforced. Any member absent 4 times in the course of the year is automatically terminated. It is the responsibility of the secretary to maintain records and minutes of each meeting.



Mr. Green asked are any members of the CAB wishing to comment.

Carrie Tipman and Nathan Brennan both members of the CAB replied that they were in support of the bylaws.

Mr. Fazande moved. Ms. Halsted seconded. Approved 6-0

9. Resolution approving the first amendment to the Exclusive Negotiating Agreement (ENA) with Treasure Island Enterprises (TIE) to give the executive director authority to extend the term of the agreement.

Mr. Proud replied that the Authority approved a RFP for development of the Marina in Jan 1998. In Feb 1999 staff was authorized to prepare an ENA with TIE executed in June 1999. Several milestones were set in motion including the formation of long-term agreements relating to development of the Marina. The term sheets and transaction documents will not be finished before the expiration of the ENA. TIE requested an extension to the ENA. Staff suggests the Authority honor the extension, as they are not in default. Environmental cleanup review has taken longer than expected; we can not execute the transaction documents until this has been received. TIE has been willing to take on some of the testing themselves. It is our recommendation you should extend the ENA for an additional twelve months.

Ms. Halsted moved. Mr. Fazande seconded. Approved 6-0

10. Resolution approving an issuance of a RFQ/consultant services to assist in the evaluations of the Preliminary developer RFQ responses.

Mr. Proud replied on February 1, 2001, when staff receives responses for the RFQ, the consultants will be asked to submit their budgets to evaluate the responses received.

Mr. Green asked if the consultant will assist staff and staff will advise the Authority. Mr. Proud replied yes.

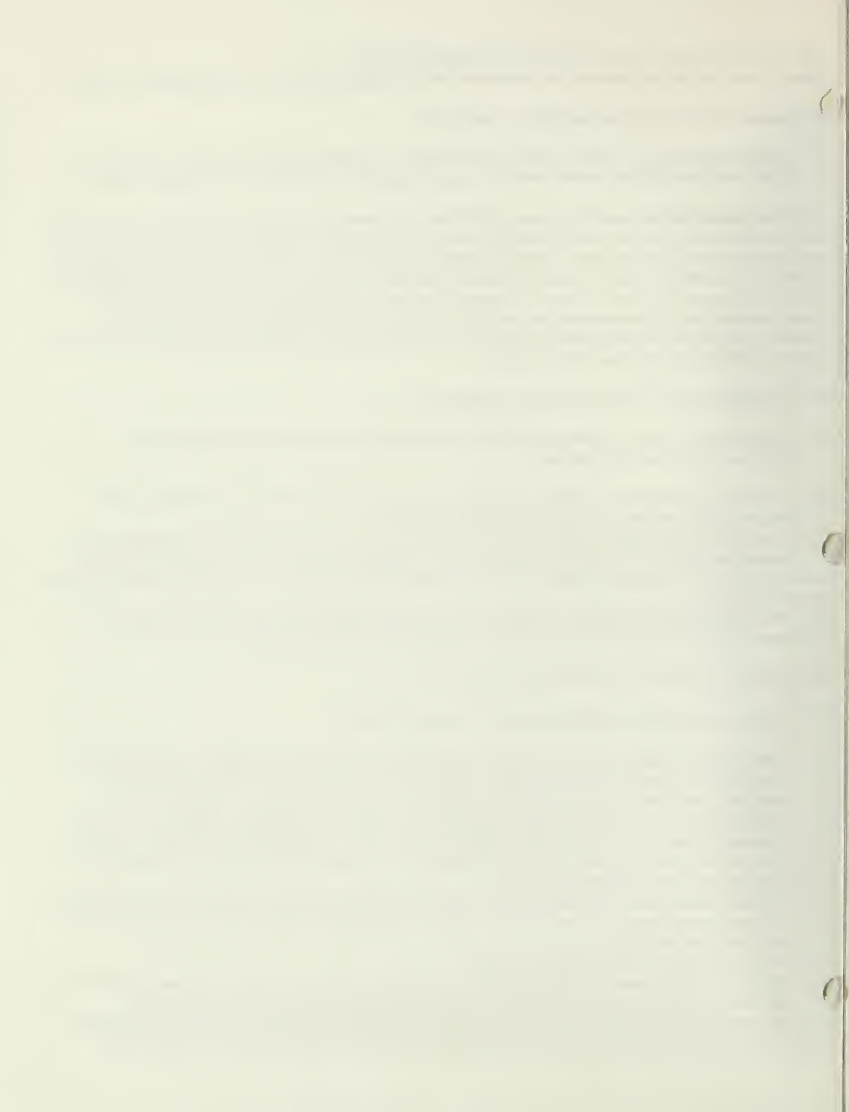
Mr. Proud added that the RFQ for a developer has three components 1) development experience 2) financial capacity 3) primary development concept. Staff is primarily seeking assistance in development experience and financial capacity.

Mr. Green asked before staff chooses a consultant, the amount to evaluate the responses for the Master Developer RFQ will be brought to the Authority for approval. Mr. Proud replied yes.

Ms. Halsted moved. Mr. Fazande seconded. Approved 6-0

4. Director's Report given by Annemarie Conroy, Executive Director.

- Public Access - Media West held a conference dinner for 1200 people in Building 3, Levi Strauss and others are holding major corporate parties. Staff is still facilitating senior bus tours of TI and YBI regularly. Sixty weddings have taken place as well as seventy private parties. In January the UC Berkeley South Asian Student Association are holding 2 events for 2,000 people in Bldg.180. Lamm Research will hold an event for 5,000 people in Bldg. 180. 40 weddings are scheduled for the rest of the year and next year and approx. 50 parties are scheduled for next year. The pre-bid conference for the RFQ for TI was well attended last month.
- Environmental cleanup - Staff continues to work with TIHDI, the Navy and the John Stewart Company in keeping the housing program moving along. Staff also continues to work with DTSC and others to work on a final plan for site 12.
- Short Term Leases - no new short term leases
- Bay Bridge - Department of Transportation was able to obtain YBI land and have now transferred it from the Navy to DOT who will transfer it to CalTrans. The Project Office is in discussions with the Governor's office and CalTrans regarding the significant mitigating package for TI/YBI and hope that a MOA or MOU will be forthcoming in 60-90 days. The project office has received a million dollar



(\$1,000,000.00) earmark in the federal budget in the ferry boat discretionary funds. Staff is in the process of formally applying for the funds through CalTrans.

- Community Issues - Buses are running every 20 minutes during peak commute times, and on weekends until midnight. 70-80% of the Island is open to the public except for areas undergoing environmental cleanup. The convenience store issue continues to plague the island but WebVan is extremely popular. We're trying to repack the convenience store to see if there are some subsidies in the different programs around the city that could assist.
- CAC - There have been two meetings and the bylaws were adopted by the Authority today.
- TIHDI - Continue to work closely with them.
- Financial report - Update will be provided at the next meeting in January.
- Legislation - There is no hearings or legislation affecting TI.

#### 5. General Public Comment

- Rev H. L Davis asked the Authority to use the chapel for religious services. Mr. Davis asked to submit his proposal to the Authority.
- Carrie Dipman of TIHDI replied that they held a small gathering similar to the SF Adopt a Family program where 30 TIHDI residents were adopted by 23 TI market rate residents. It was a wonderful event and families and children enjoyed a great Christmas.

#### 6. Ongoing Business by Directors and Introduction of new Business

Mr. Green asked the fellow members of the Authority should there be a discussion of the Chapel or should it be calendared for discussion so we can hear the presentation.

Mr. Choy replied that because the chapel is on federal property must remain open to the public and can not be used exclusively or primarily by one party.

Ms. Conroy added that staff has been working to see how we can accommodate not just faith-based organizations but others that would like to use the chapel on non-peak hours.

Mr. Green asked that the item be discussed in the Director's Report at the January meeting.

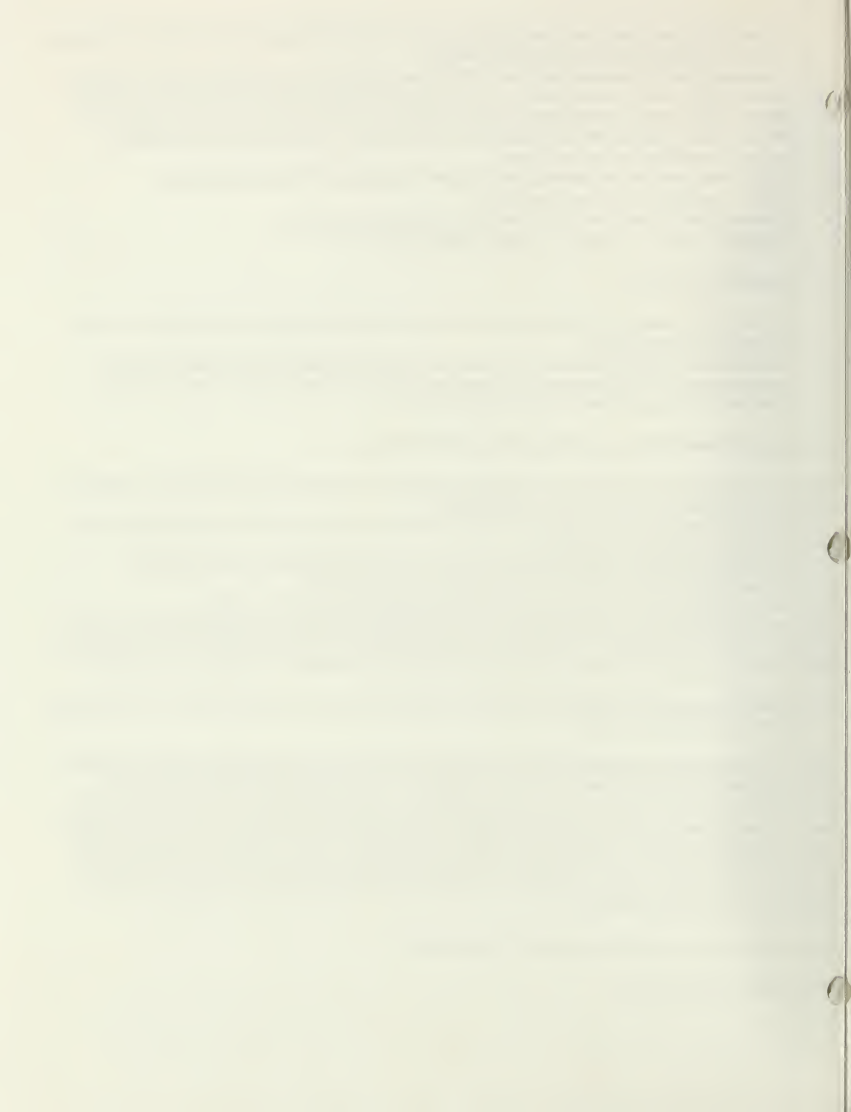
Ms. Conroy added that staff has had discussion of an off-peak hourly price that would cover janitors and staff. In addition there is a legal opinion available that will be provided to the Authority members. Ms. Conroy added that staff has not put unsolicited proposals before the Authority because we receive them on a regular basis.

#### 8. Resolution approving the Cooperative Agreement with the U.S. Navy for the period October 1, 2000 through September 30, 2001 for \$145,000.

Ms. Conroy replied that the Authority has been operating under declining funding that is provided to the Island for closing bases to maintain the streets, facilities, utilities, etc. Last year was really the final year of the Cooperative Agreement (CA) however we have negotiated for an additional \$145,000.00 for the federal fiscal year. The environmental cleanup has had an effect on the income from John Stewart Co., as we can not use the units until they are cleaned up. The Navy has agreed to the \$145,000.00 and we are seeking additional funds. Robert Mahoney, Deputy Director added that we have a three month no cost extension for the CA ending Jan 31, 2001. We would have to sign a Cooperative Agreement for the federal fiscal year beginning September 2000 until the end of September 2001.

Ms. Po-Rufino moved. Mr. Fazande seconded. Approved 6-0

11. Meeting adjourned 3:06 PM.



























**AGENDA ITEM**  
**Treasure Island Development Authority**  
*City and County of San Francisco*

**Subject:** Authorizing and endorsing submission of a grant application to the Economic Development Administration, an agency of the United States Department of Commerce, for \$202,500 for the development of plans and specifications for the seismic strengthening of the Causeway.

**Agenda Item:** 7      **Contact person/phone:** Joan Rummelsburg 274-0660

**Meeting date:** January 10, 2001

**SUMMARY OF PROPOSED ACTION:** Staff seeks the authorization and endorsement of the Authority for the proposed project and the application to the United States Department of Commerce for \$270,000 for a Defense Adjustment Grant. The resolution also reaffirms the Reuse Plan as the guiding document for the reuse and redevelopment of Treasure Island and authorizes the executive Director to accept the EDA grant funds if approved.

**BACKGROUND AND DESCRIPTION OF PROPOSED ACTION:** The Reuse Plan and two geotechnical studies (one commissioned by the Navy, the other by the City as part of the Reuse Plan process) document damage from the 1989 Loma Prieta earthquake to the Causeway between Yerba Buena and Treasure Island. The Causeway is the lifeline between the two islands because it contains utility line, and provides vehicular access to cars, trucks and public transit. Without reinforcement of the Causeway, redevelopment of Treasure Island cannot proceed.

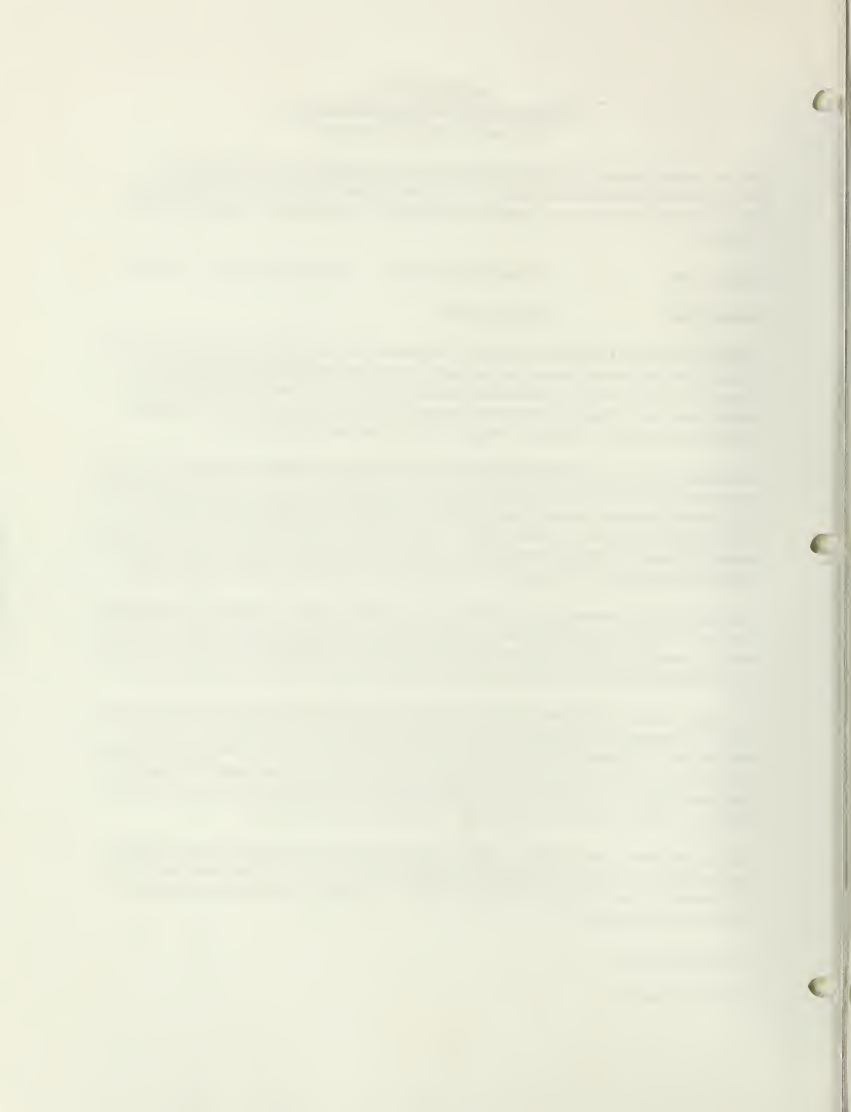
This application for funding is the first phase of a two-phase project to repair and strengthen the Causeway. The funding will be used to assess the damage, update existing studies, formulate a specific engineering solution and develop construction-ready specifications. Phase Two will be the actual stabilization of the Causeway and will be the subject of future funding applications.

Two grant programs, California's California Defense Adjustment Matching grant (CDAM) and the U.S. Department of Commerce's Economic Development Administration's (EDA) grant provide funds for planning and the implementation of economic redevelopment of military bases that are closing or that have already shut down. The CDAM grant provides a 50% match for other local funds. The Authority received notification last month that it has been awarded \$67,500 in CDAM funds by the California Trade and Commerce Agency.

EDA administrators reviewing the Authority's application have requested that the Authority board reaffirm the Authority's commitment to the Reuse Plan as the guiding document for the City's reuse and redevelopment of Treasure Island. Accordingly, the attached resolution incorporates that assurance.

**ATTACHMENTS:**

1. EDA application



1 [Endorsing EDA Grant Application]

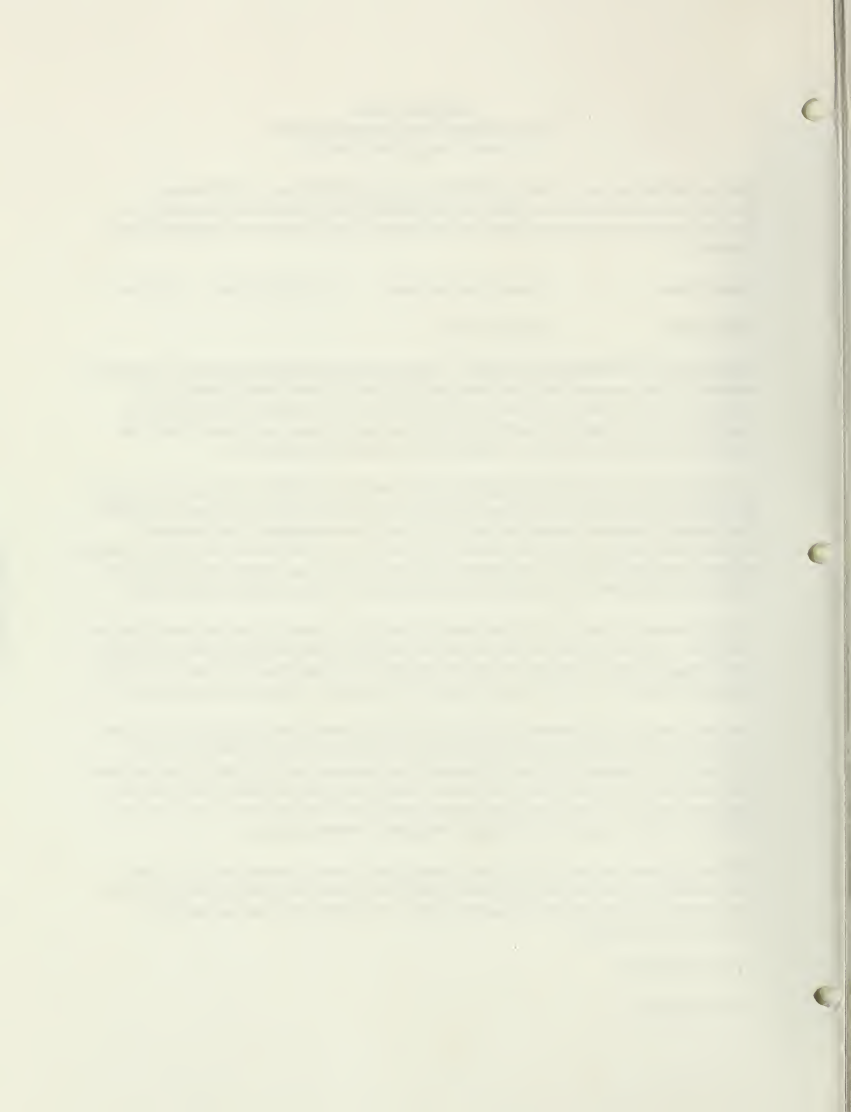
2 ENDORSING A GRANT APPLICATION TO THE ECONOMIC DEVELOPMENT  
3 ADMINISTRATION OF THE UNITED STATES OF AMERICA ("EDA"); AUTHORIZING THE  
4 EXECUTIVE DIRECTOR TO ACCEPT THE EDA GRANT IF APPROVED; AND  
5 REAFFIRMING THE REUSE PLAN AS THE GUIDING DOCUMENT FOR THE PLANNING  
6 AND REDEVELOPMENT OF NAVAL STATION TREASURE ISLAND IN CONNECTION  
7 WITH THE GRANT APPLICATION.

8 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended  
9 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter  
10 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority  
11 as a redevelopment agency under California redevelopment law with authority over former  
12 Naval Station Treasure Island (the "Base"), and (ii), with respect to those portions of the Base  
13 which are subject to the public trust for commerce, navigation and fisheries (the "Tidelands  
14 Trust"), vested in the Authority the authority to administer the Tidelands Trust as to such  
15 property; and,

16 WHEREAS, The Board of Supervisors approved the designation of the Authority as a  
17 redevelopment agency with powers over Treasure Island in Resolution No. 43-98, dated  
18 February 6, 1998; and

19 WHEREAS, In July 1996, after an extensive community planning effort , a Draft Reuse  
20 Plan for the Base was unanimously endorsed by the Mayor, the Board of Supervisors, the  
21 Planning Commission and the CRC; and

22 WHEREAS, The City forwarded the Reuse Plan to the Department of Defense in July  
23 1996 to serve as the guiding document for the Navy and City in preparation of a joint  
24 Environmental Impact Statement/ Environmental Impact Report (EIR/EIS) and the Reuse Plan  
25 serves as the basis for the Preliminary Redevelopment Plan for the Base; and



1 [Endorsing EDA Grant Application]

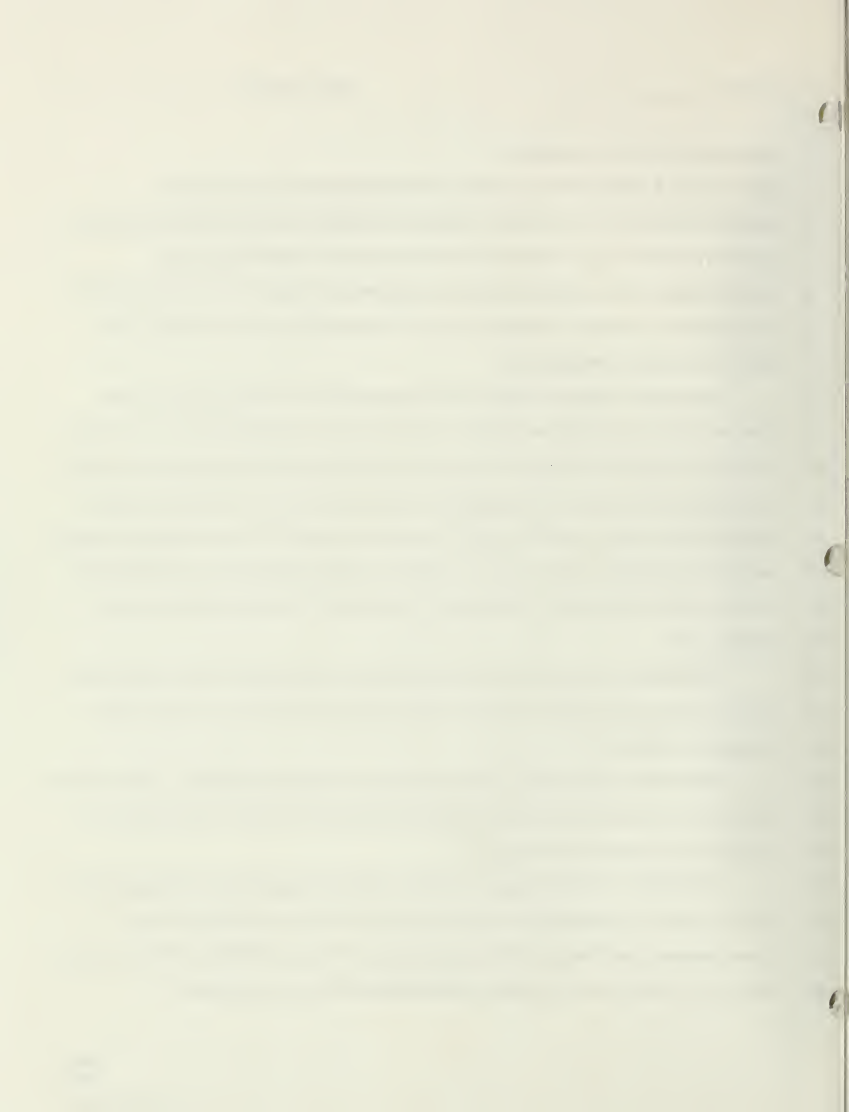
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24 Environmental Impact Statement/ Environmental Impact Report (EIR/EIS) and the Reuse Plan  
25 serves as the basis for the Preliminary Redevelopment Plan for the Base; and



1 WHEREAS, The Reuse Plan was the basis for the Authority's submittal to the U.S.  
2 Navy of the Economic Development Conveyance in June, 2000; and

3 WHEREAS, The conversion of the Base according to the goals and objectives of the  
4 Reuse Plan will require extensive coordination and large investments of funds for new  
5 infrastructure and for extensive repair and upgrade of the Base's existing seismic protections;  
6 and

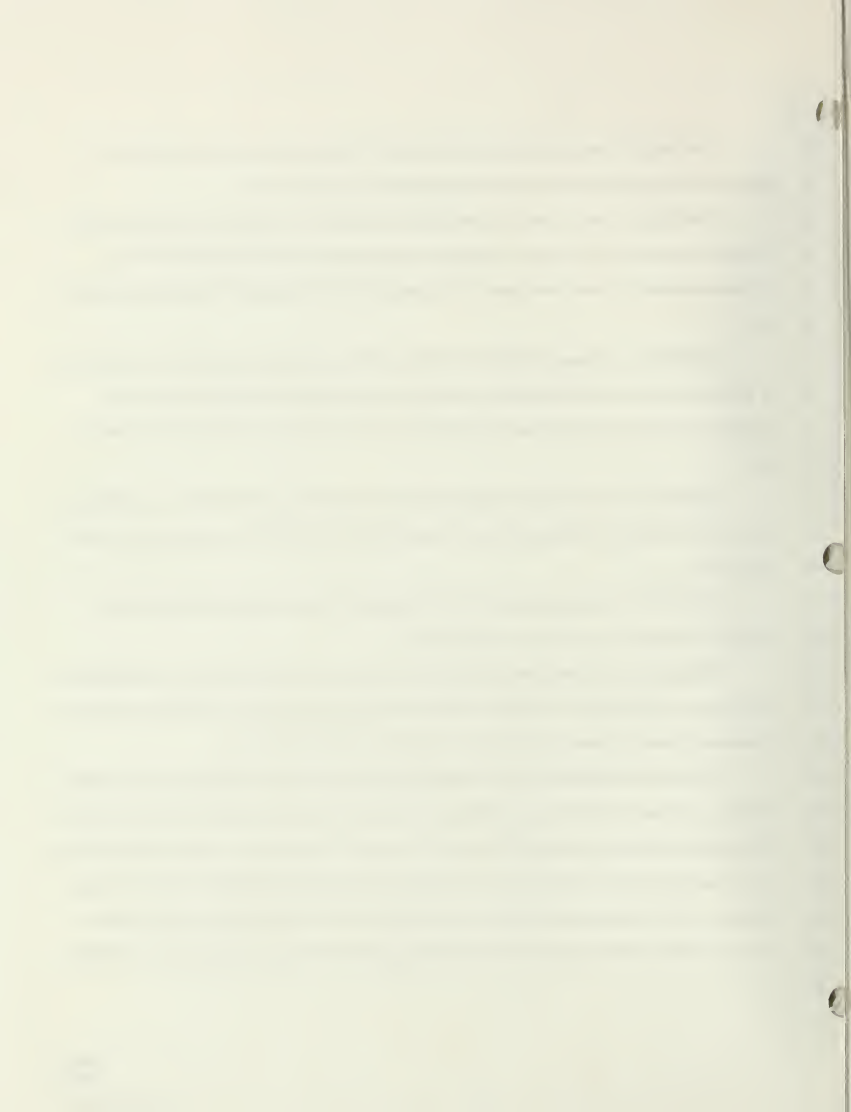
7 WHEREAS, In August, 2000, the Authority staff submitted an application to the EDA for  
8 a grant in the amount of \$202,500 for planning and engineering activities related to the  
9 seismic strengthening of the Causeway between Treasure Island and Yerba Buena Island;  
10 and

11 WHEREAS, In connection with the EDA grant application, the EDA has requested that  
12 the Authority reaffirm the Reuse Plan as the guiding document for the redevelopment of the  
13 Base; and

14 WHEREAS, In the event that the EDA approves the grant application, staff seeks  
15 authority to accept the grant; now therefore, be it

16 RESOLVED, That the Board of Directors hereby endorses the EDA grant application in  
17 the amount of \$202,500 for activities related to the planning and seismic strengthening of the  
18 Causeway between Treasure Island and Yerba Buena Island; and be it

19 FURTHER RESOLVED, That, if the EDA approves the grant application, the Board of  
20 Directors authorizes the Executive Director of the Authority or her designee to enter into enter  
21 into a grant agreement with the EDA and any additions, amendments or other modifications to  
22 such grant agreement (including, without limitation, the attached exhibits) that the Executive  
23 Director or her designee determines, in consultation with the City Attorney, are in the best  
24 interests of the Authority and do not otherwise materially increase the obligations or liabilities  
25





1 of the Authority, and are necessary or advisable to obtain the EDA grant funds and effectuate  
2 the purpose and intent of this resolution; and be it

3 FURTHER RESOLVED: That the Board of Directors hereby finds and determines that  
4 the seismic strengthening of the Causeway between Treasure Island and Yerba Buena Island  
5 is consistent with the planning goals and objectives of the Reuse Plan and hereby reaffirms  
6 the Reuse Plan as the guiding document for the planning and redevelopment of Naval Station  
7 Treasure Island in connection with the EDA grant application.

8 ////

9 ////

10 ////

11 ////

#### 12 CERTIFICATE OF SECRETARY

13  
14 I hereby certify that I am the duly elected and acting Secretary of the Treasure  
15 Island Development Authority, a California nonprofit public benefit corporation, and  
16 that the above Resolution was duly adopted and approved by the Board of Directors of  
17 the Authority at a properly noticed meeting on January 10, 2001.

18  
19 \_\_\_\_\_  
20 John Elberling  
21  
22  
23  
24  
25



Figure 1: SF-424

OMB Approval No. 0348-0043

APPLICATION FOR  
FEDERAL ASSISTANCE

1. TYPE OF SUBMISSION:		2. DATE SUBMITTED		Applicant Identifier	
<input type="checkbox"/> Application <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		8-28-00 3. DATE RECEIVED BY STATE		State Application Identifier	
<input type="checkbox"/> Preapplication <input type="checkbox"/> Construction <input type="checkbox"/> Non-Construction		4. DATE RECEIVED BY FEDERAL AGENCY		Federal Identifier	
5. APPLICANT INFORMATION					
Legal Name:			Organizational Unit:		
Treasure Island Development Authority			same		
Address (give city, county, State, and zip code):			Name and telephone number of person to be contacted on matters involving this application (give area code)		
410 Avenue of Palms San Francisco, CA 94130			(415) 274-0299 Joan Rummelsburg- (415) 274-0660		
6. EMPLOYER IDENTIFICATION NUMBER (EIN):			7. TYPE OF APPLICANT: (enter appropriate letter in box)		
94-312189			A. State B. County C. Municipal D. Township E. Interstate F. Intermunicipal G. Special District H. Independent School Dist. I. State Controlled Institution of Higher Learning J. Private University K. Indian Tribe L. Individual M. Profit Organization N. Other (Specify) LRA		
8. TYPE OF APPLICATION:			9. NAME OF FEDERAL AGENCY:		
<input checked="" type="checkbox"/> New <input type="checkbox"/> Continuation <input type="checkbox"/> Revision If Revision, enter appropriate letter(s) in box(es) <input type="checkbox"/> <input type="checkbox"/> A. Increase Award B. Decrease Award C. Increase Duration D. Decrease Duration Other (specify):					
10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER:			11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:		
11-209			Prepare bid-ready plans to seismically strengthen the Treasure Island Causeway.		
12. AREAS AFFECTED BY PROJECT (Cities, Counties, States, etc.):			TITLE Defense Adjustment		
13. PROPOSED PROJECT			14. CONGRESSIONAL DISTRICTS OF:		
Start Date Ending Date a. Applicant			b. Project		
12/5/00 12/31/01 #8			#8		
15. ESTIMATED FUNDING:			16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?		
a. Federal \$ 202,500 75% b. Applicant \$ c. State \$ 67,500 12.5% d. Local \$ 67,500 12.5% e. Other \$ f. Program Income \$ g. TOTAL \$ 337,500			a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON DATE 10/5/00 b. NO <input type="checkbox"/> PROGRAM IS NOT COVERED BY E.O. 12372 <input type="checkbox"/> OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW		
			17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?		
			<input type="checkbox"/> Yes If "Yes," attach an explanation. <input checked="" type="checkbox"/> No		
18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT, THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED.					
a. Type Name of Authorized Representative		b. Title		c. Telephone Number	
Robert Mahoney		Dep. Exec Director		(415) 274-0660	
d. Signature of Authorized Representative		e. Date Signed		8-28-00	
[Signature]					



Provide a concise narrative statement for the following items in the order listed below. Refer to EDA regulations at 13 CFR Chapter III, and the Federal Register Notice of Funding Availability when completing this preapplication.

## Project Area

- Identify the project area.
- If the project area is not defined by geographical/political boundaries, provide a description of the proposed project area, document that the project area is of sufficient size appropriate to the project, and justify the proposed boundaries in relation to the project's benefits to the area.
- Provide justification for area eligibility (if applicable) and grant rate determination (see 13 CFR Part 301) as requested by EDA.

please see Attachment A

## Project Description

- Briefly describe the components of the project. For construction projects, attach an original or clear copy of a USGS topographic map clearly showing the location of the project.
- Provide a clear scope of work for the proposed EDA project.

please see Attachment B

## Proponent's Capability

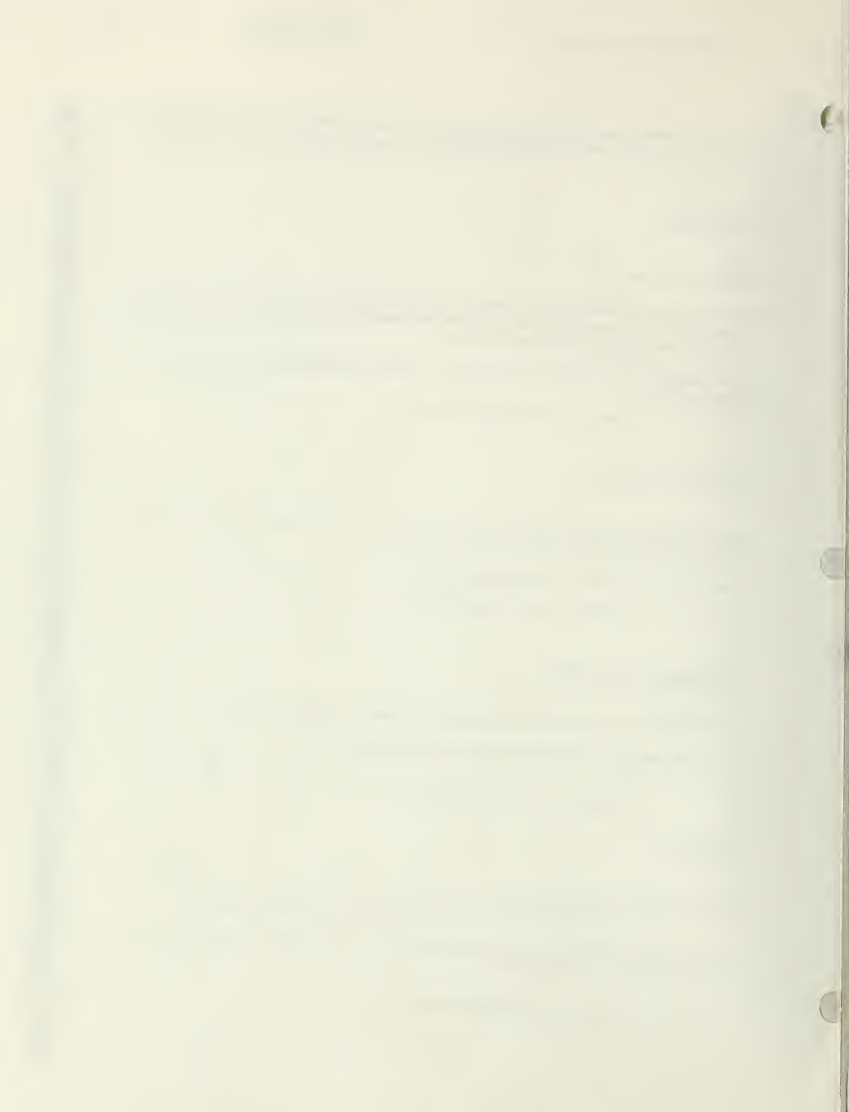
- Briefly describe the proponent's capability to administer, implement, and market the project
- Explain when the project will start and end (proposed time schedule for the project)

please see Attachment C

## Problem

- Briefly describe the severity of the problems that are adversely affecting economic development in the community and how the project will address the problems and complement the community's planning process
- Briefly describe how the project will address goals and objectives of the Comprehensive Economic Development Strategy (CEDS) for the area (if applicable)

please see Attachment D



## Project Impact

- Briefly describe the expected impacts from the project on the community and how unemployed, underemployed, dislocated or low income workers will benefit from the project.
- Include estimates for job creation/retention and private sector investment expected to result from this project.
- Identify other competitive selection criteria addressed by the project.

Please see Attachment E

## Project Beneficiaries

Identify employers who will benefit from the project:

Company	Products and Services	Jobs Saved	New Jobs	Private Sector Investment \$	Committed or Interest Only

## Civil Rights Issues

- If the proponent and/or employers identified above have been the subject of any unresolved issues of negative determinations, arising from civil rights compliance reviews, complaints, lawsuits or other allegations of discrimination on the basis of race, color, national origin, sex, disability or age within the past two years, briefly describe the issue(s) and status thereof.
- Does the applicant and any identified "Other Parties" understand and agree to the EDA civil rights requirements for signed assurances, employment data, and any other information which may be needed to determine compliance?

XX Yes

☐ No

XX Applicant

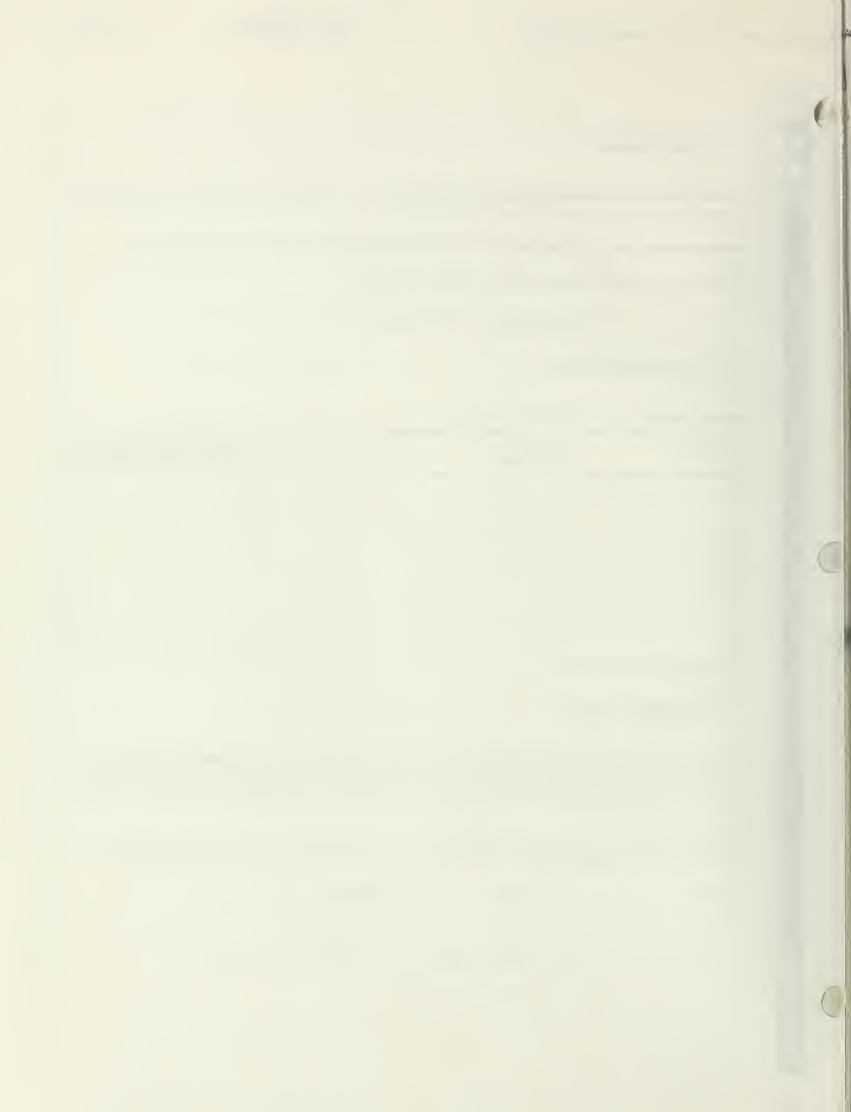
☐ Yes

☐ No

☐ "Other Parties"

☐ Not Applicable

☐ No "Other Parties" Identified





## Funding

Construction Project Budget Estimate		Non-Construction Project Budget Estimate	
Administrative Expenses	\$	Personnel	\$ 23,100
Land, Structures, ROW, Easements	\$	Fringe Benefits	\$ 6,950
Relocation & Incidental Costs to Acquisition	\$	Travel	\$
A/E Fees & Inspection	\$	Equipment	\$
Site Work	\$	Supplies	\$ 300
Construction and Demolition	\$	Contractual	\$307,000
Equipment	\$	Other (Postage)	\$ 150
Contingencies	\$	Total Direct Charges	\$
		Indirect Charges	\$
Total Project Cost	\$	Total Project Cost	\$337,500

## Identify Sources of Non-EDA Funding

- Provide information on the sources and timing of all funding commitments.

The Treasure Island Development Authority has submitted an application for \$67,500 to the California Trade & Commerce Agency for a California Defense Adjustment Matching (DAM) Grant. The application was submitted on September 15, 2000. In addition the Treasure Island Development Authority has submitted \$67,500 in cash and in-kind.



## Title/Ownership/Operation and Maintenance (Construction Projects)

- Briefly describe plans for property management.
- Will the facilities funded by EDA be owned, operated and/or maintained by an entity other than the proponent? If yes, identify.
- Will the real property to be improved, or the facilities funded, by EDA be mortgaged or used as collateral for any financing and/or is any real property to be used for this project currently mortgaged or being used for collateral? If yes, explain.
- If the facilities funded by EDA will include acquisition, construction, or improvement of a building or acquisition or improvement of significant items of tangible personal property, can the proponent provide a security interest to EDA? If no, explain.

## Environmental Issues

- Give a brief physical description of the project site noting topography, vegetation, water bodies, and location and condition of any manmade structures or buildings.

If yes to any question below, briefly explain.

1. Will the project be located in or adjacent to a floodplain or wetland area?

☐ Yes

☐ No

☒ Not Applicable

2. Will the project be located in or adjacent to an area with known hazardous or toxic contamination?

☐ Yes

☐ No

☒ Not Applicable

3. Will there be any toxic or hazardous waste, or asbestos associated with this project or employers benefitting from this project?

☐ Yes

☐ No

☒ Not Applicable

4. Will the project impact any archeological sites, buildings, or structures older than 50 years, or any properties listed on, or eligible for the National Register of Historic Places?

☐ Yes

☐ No

☒ Not Applicable

5. Will this project result in any other adverse environmental impacts which would affect endangered or threatened species, scenic rivers, or other sensitive ecological habitats?

☐ Yes

☐ No

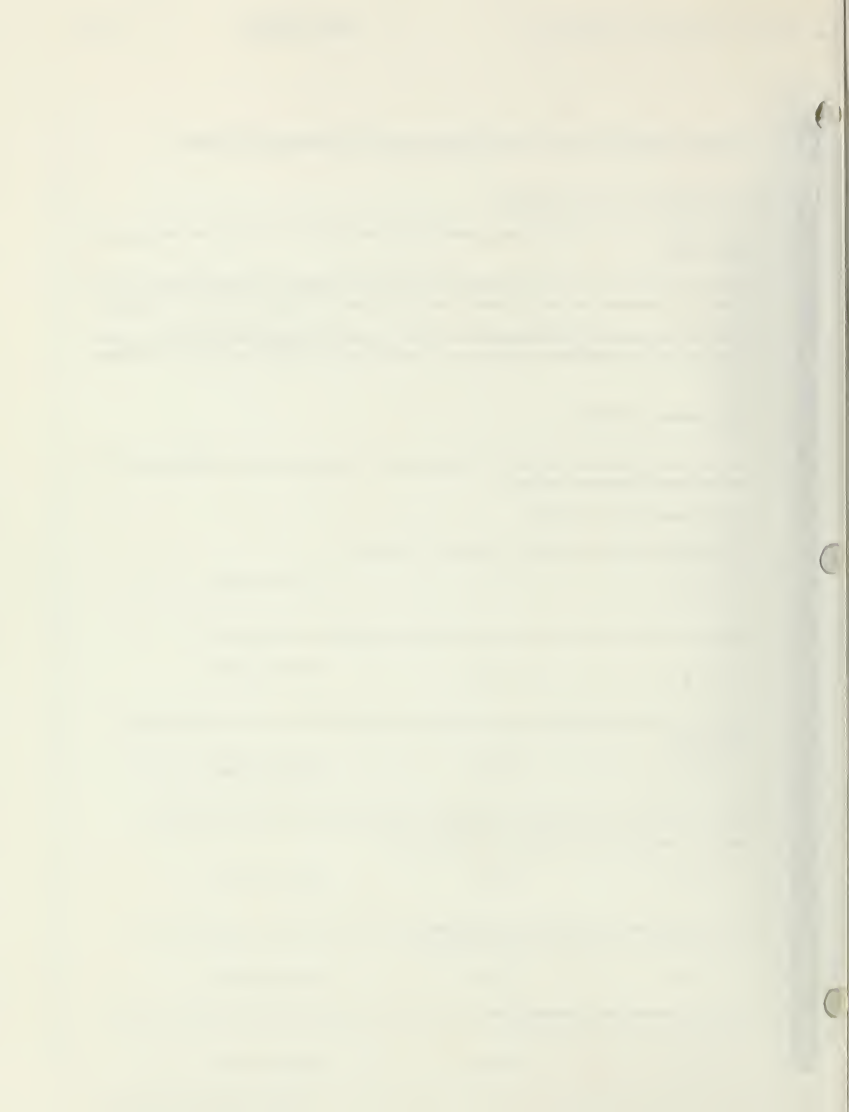
☒ Not Applicable

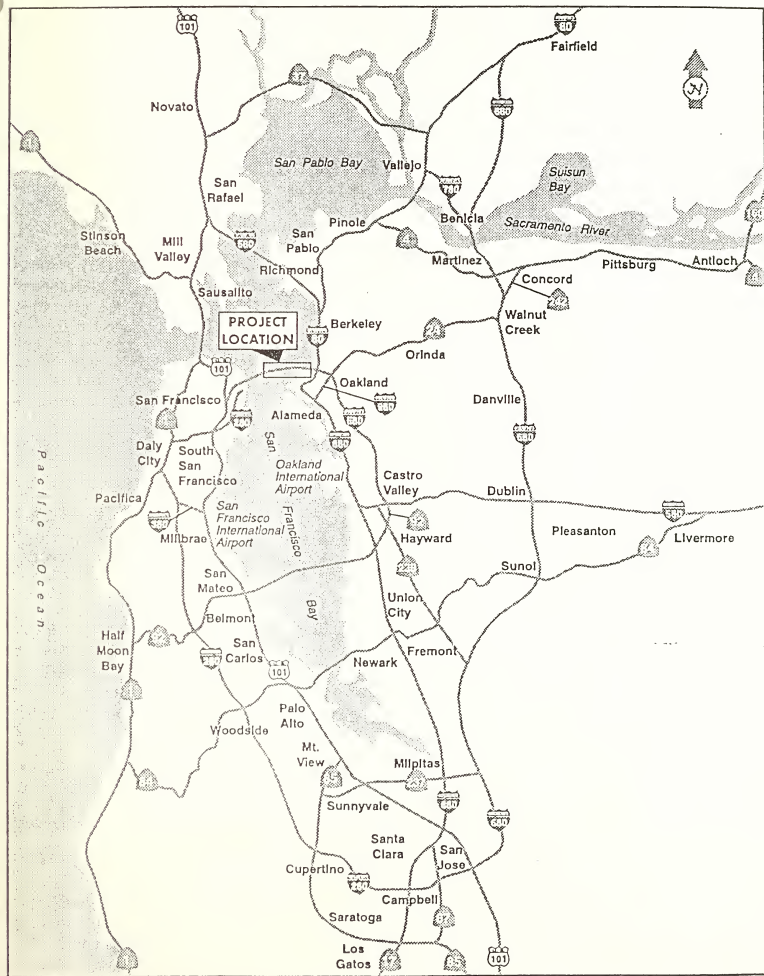
6. Has an environmental impact statement or other similar analysis been completed for this proposed project or for other activities in the area of this proposed project?

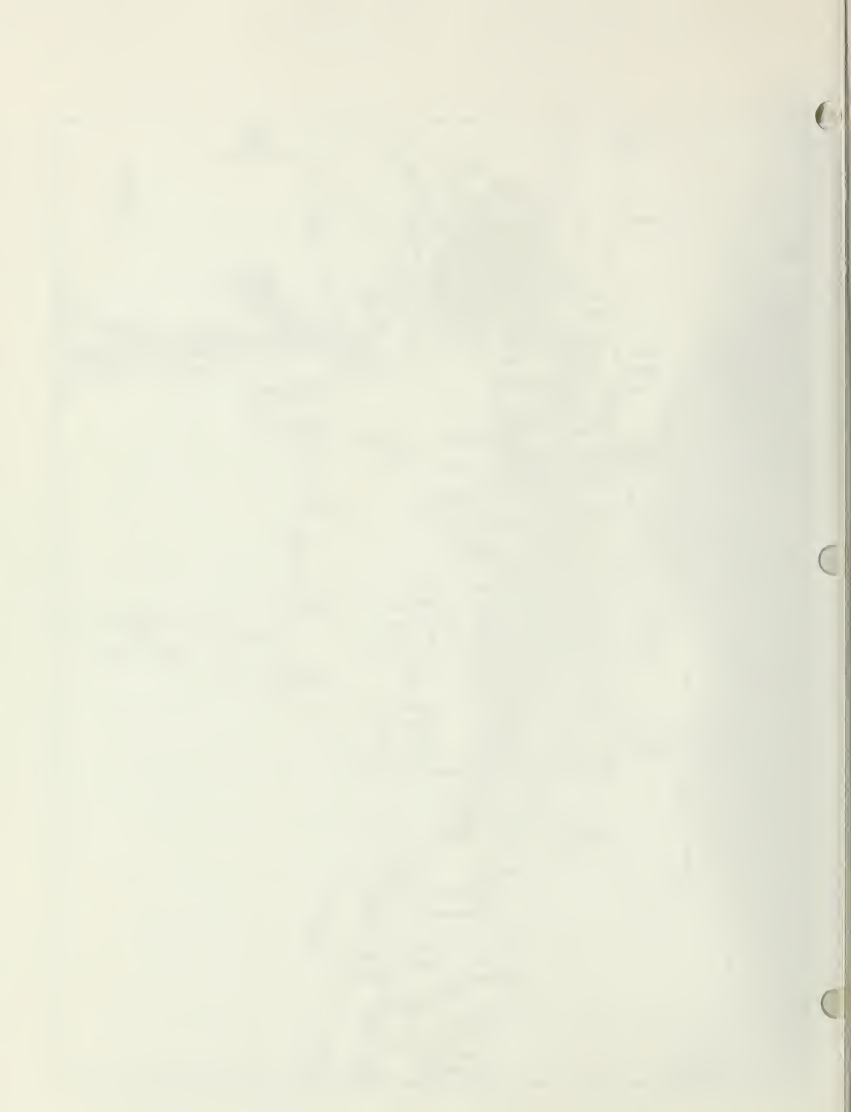
☐ Yes

☐ No

☒ Not Applicable

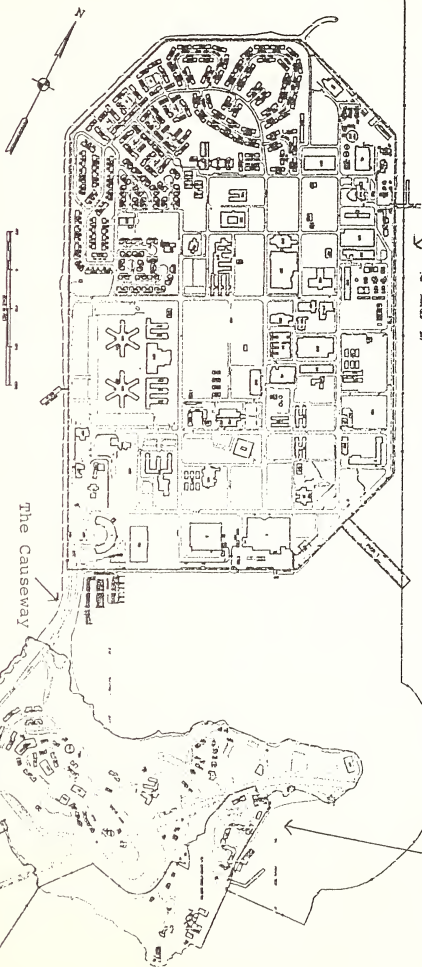


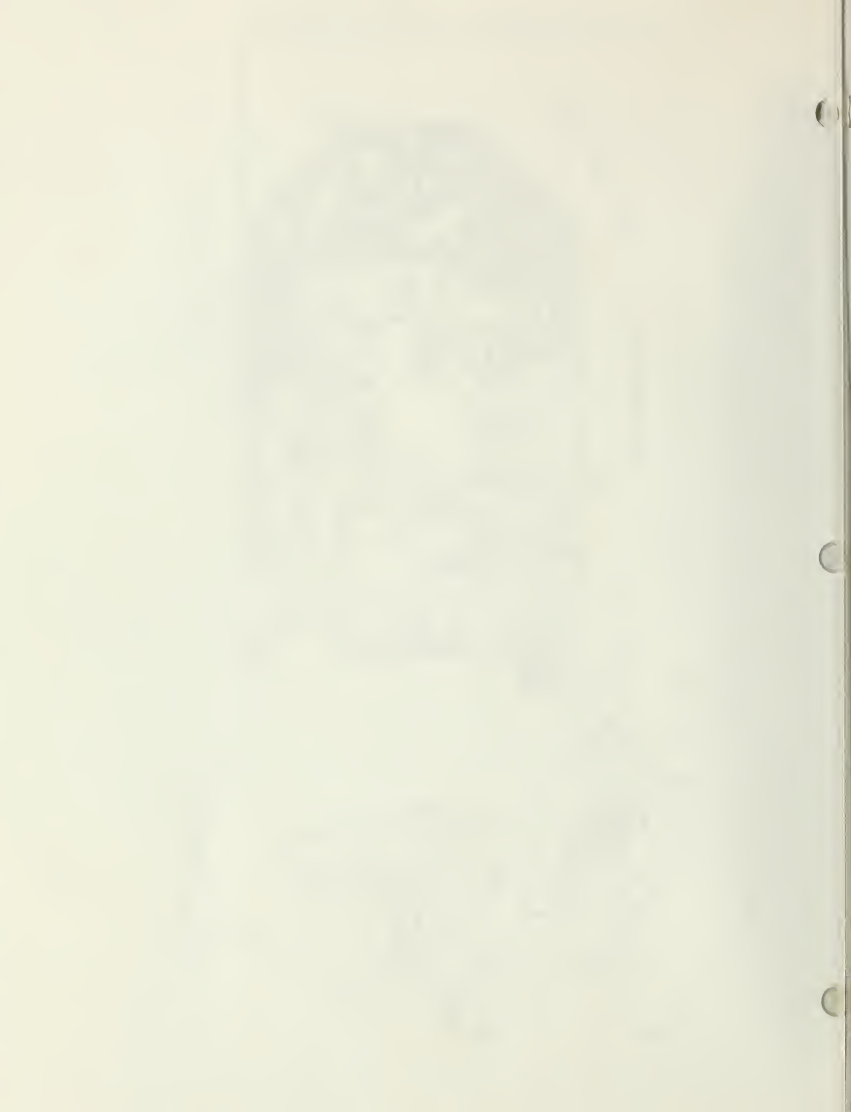




Treasure Island

Yerba Buena Island







## **Attachment A - Project Area**

Treasure Island is located in San Francisco Bay with San Francisco and Oakland the nearest cities. Treasure Island Naval Base includes Treasure Island and Yerba Buena Island. Both are within the city and county limits of San Francisco. Please see attached map.

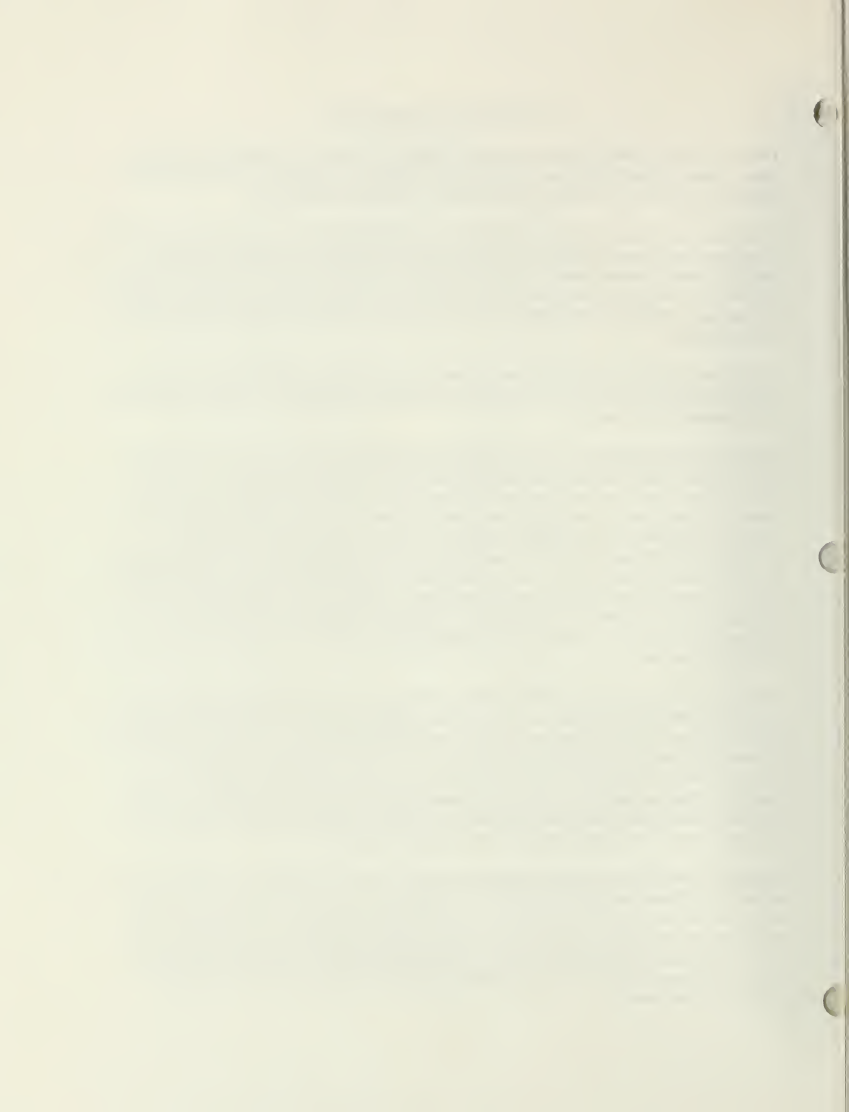
Treasure Island's Causeway is a crucial lifeline between Yerba Buena Island and Treasure Island. All visitors, residents, and workers must pass over the Causeway, located between the two islands, to reach Treasure Island. It is the sole access from Treasure Island to the San Francisco-Oakland Bay Bridge. The current daytime population of both islands is approximately 4,000 and growing daily. Without a serviceable causeway, emergency vehicles will not be able to reach Treasure Island.

The Causeway is also a utility lifeline to and from Treasure Island. Gas and electric lines are buried within the Causeway. If the Causeway is damaged in an earthquake, Treasure Island will be left without critical services.

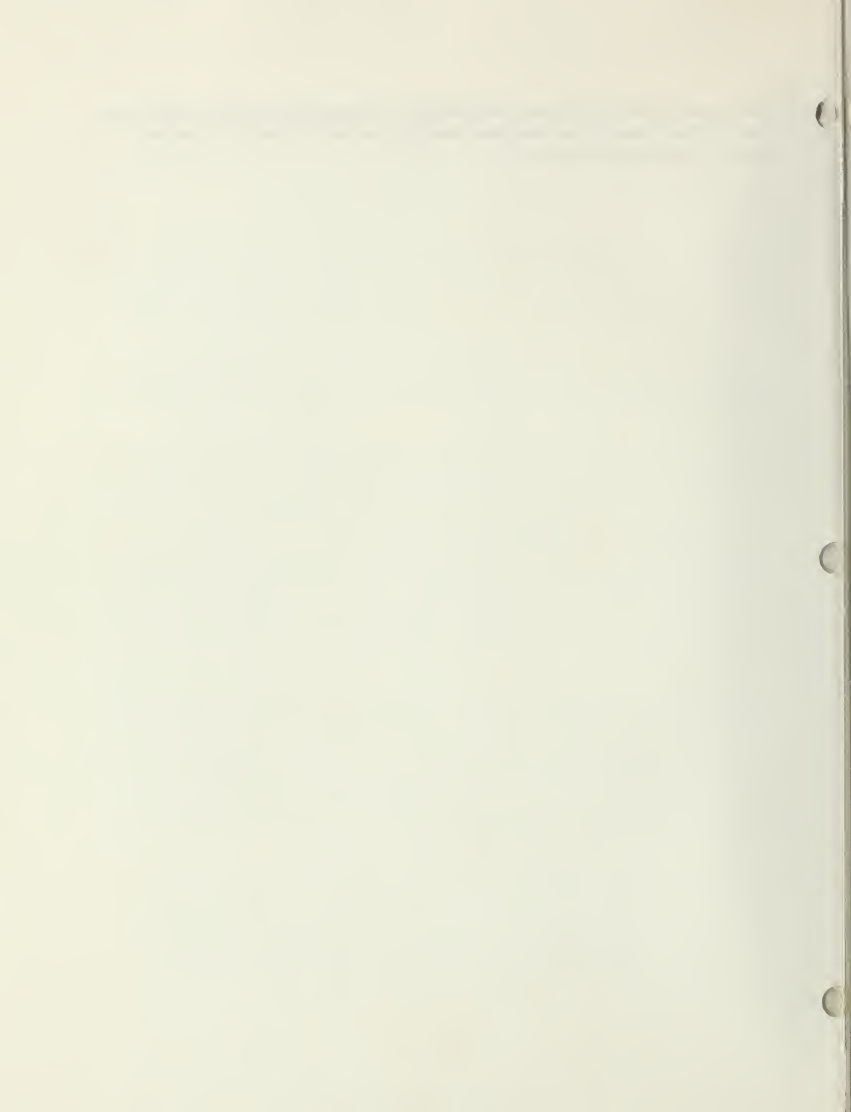
**The Need to Strengthen the Causeway:** Because the San Francisco Bay Area is a seismically active region, Treasure Island will experience both minor and major earthquakes in the future. These will most likely emanate from both the San Andreas and Hayward faults. Numerous earthquakes have been recorded in the Bay Area in the past, the largest of which was the San Francisco Earthquake of 1906 (Richter magnitude 8.3) and the more recent Loma Pieta Earthquake of 1989 (magnitude 7.1). According to seismologists and earthquake experts, there is a 67% probability of one or more large earthquakes occurring in the San Francisco Bay region closer to Treasure Island in the 30-year period between 1990 and 2020. This includes a 28% probability of the occurrence of a magnitude 7 earthquake on the northern segment of the Hayward fault and a 2% probability of a magnitude 8 earthquake on the North Coast segment of the San Andreas fault.

Stability analyses by Geomatrix indicate that the causeway slopes will fail during or after either design level earthquake (as defined as 8 on the San Andreas and 7 on the Hayward fault). The report states that, "It is our judgment that lateral spreading and successive failure (or slumping) of the causeway slopes will produce large deformations...The roadway surface at the lower elevations near the entry gate will settle and approach sea level in response to lateral spreading...Based on these observations and considering the construction and geometry of the causeway embankments, horizontal displacement of 20 feet and vertical displacement of 10 feet would be reasonable to expect during (or after) a design earthquake."

**Determining Methods to Strengthen the Causeway:** Two reports developed in 1991 and 1995, respectively, address how best to strengthen the Causeway so that it is passable after a design earthquake (see above stability analyses). Two consultant firms, Geomatrix, whose report was written for the U.S. Navy in 1991, and more recently Treadwell & Rollo, Incorporated, in 1995, set out methods to strengthen the Causeway. Methods discussed by the firms include deep soil mixing, installation of stone columns to provide densification of granular soil, soil-cement columns and rock berms.



These reports are nine and five years old respectively. A reassessment of seismic conditions and a review of most recent seismic remediation methods is necessary to determine the optimal means of strengthening the Causeway.



## **Attachment B - Project Description**

### **Scope of Work**

The project of Causeway stabilization is a two-phase process and the Treasure Island Authority seeks funding for Phase One.

#### Phase One:

- Update conditions on Causeway, including development of topographic survey
- Selection of preferred means of stabilization
- Development of bid-ready plans and specifications

To accomplish these tasks, the Treasure Island Development Authority will secure the services of geotechnical and civil engineering firms through a competitive selection process. Based on responses from several firms, we estimate this phase to cost \$250,000 - \$270,000.

#### Phase Two

The actual stabilization process

### **Background**

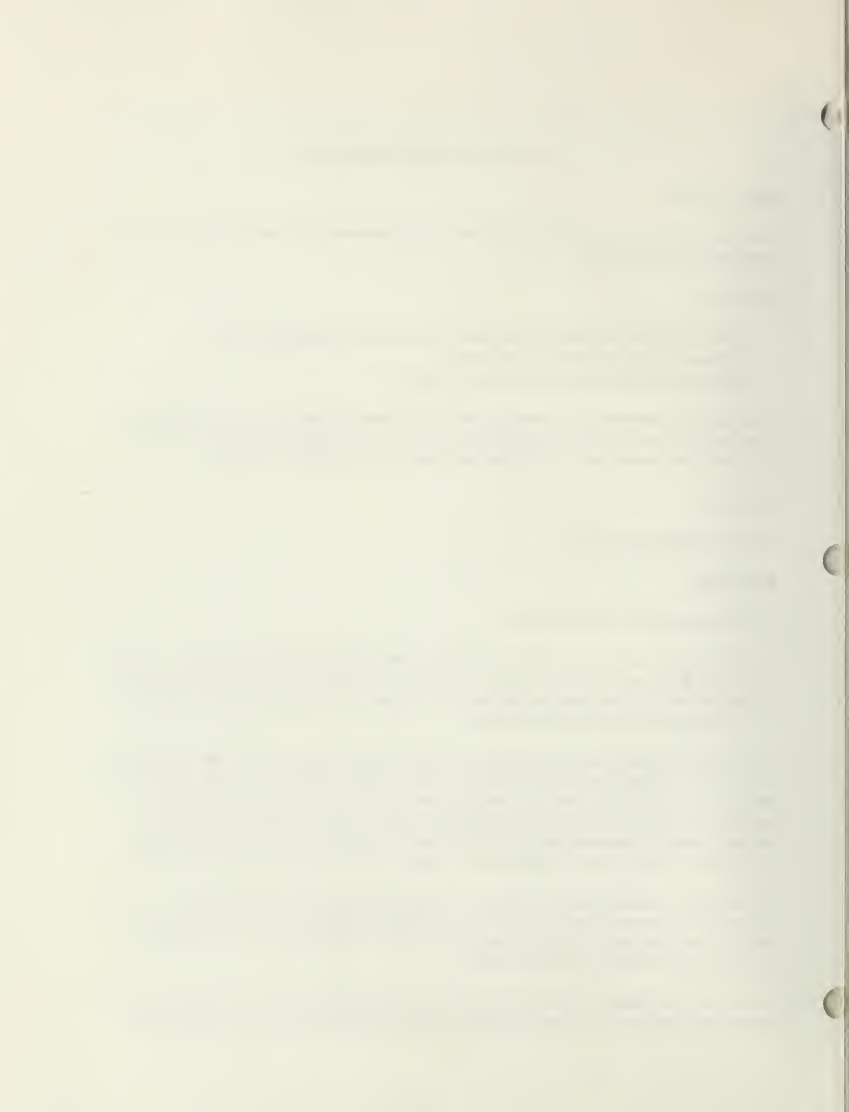
#### **The Construction of Treasure Island**

Treasure Island, a man-made island in the middle of San Francisco Bay was originally conceived of as a mid-Bay airport. The plan was soon modified to provide a site to celebrate completion of the Golden Gate and San Francisco-Oakland Bay Bridges. The celebration was the legendary, 1939 Golden Gate International Exposition.

The island was constructed over a period of 16 months, from February 1936 to its completion in August 1937. Although more than 29,000,000 cubic yards of dredged material, mostly sand, was hauled to the Yerba Buena shoals just north of Treasure Island, approximately 21,000,000 remained after wind, wave erosion, and settlement took their toll. The dredged fill materials were composed of fine-to-medium grained sand and silty sand that were placed over a natural sand bar and a layer of weak, compressible silt and clay sediment, known locally as Bay Mud.

The Causeway connecting the two islands was constructed to service Treasure Island. The filled portion of the causeway is approximately 50 feet wide and 1,000 feet long. To hold the fill which created Treasure Island and the causeway, a series of rock dikes was constructed around the island to a final grade elevation of 14 feet.

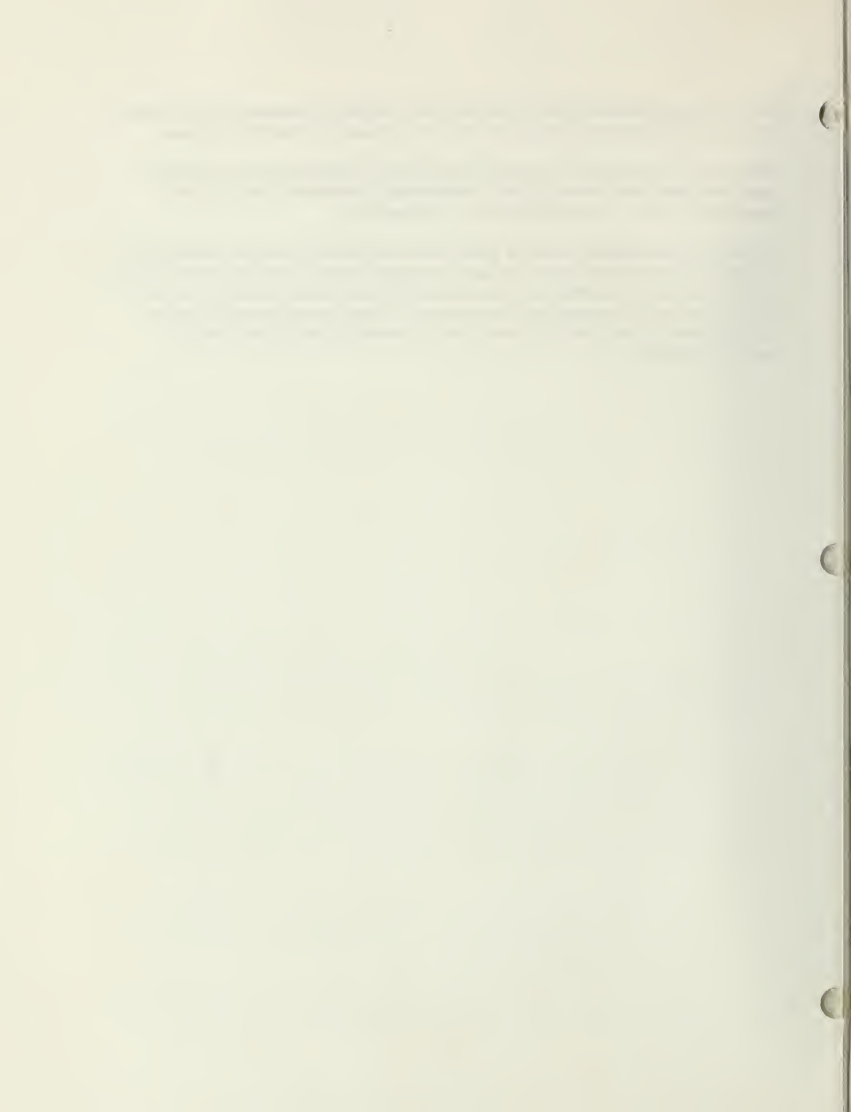
**Initial and Continuing Subsidence:** According to geotechnical reports, the initial rate of ground settlement at Treasure Island after completion of filling was rapid and uneven. The rate and



result of on-going subsidence varies across the island, including the causeway, from 3.2 feet on the southwest portion of the island to 5.3 feet in the northwest to 4.2 feet in the southeast.

**Damage to Treasure Island's Causeway from the Loma Prieta Earthquake:** During the Loma Prieta earthquake, whose epicenter was more than 50 miles away, ground surface accelerations of about 0.16g were measured on Treasure Island.

The Loma Prieta earthquake resulted in ground failures and damage to utilities, roadways and buildings at many locations across the island. According to a report developed for the U.S. Navy in 1990 by Geomatrix, liquefaction of the sandy soils that comprise the Causeway produced cracking observed in the roadway atop the causeway. Distress was concentrated in an area beginning about 250 feet south of the entry gate and extending about 500 feet along the causeway alignment.





## Attachment C - Proponent's Capability

### The Treasure Island Development Authority (TIDA).

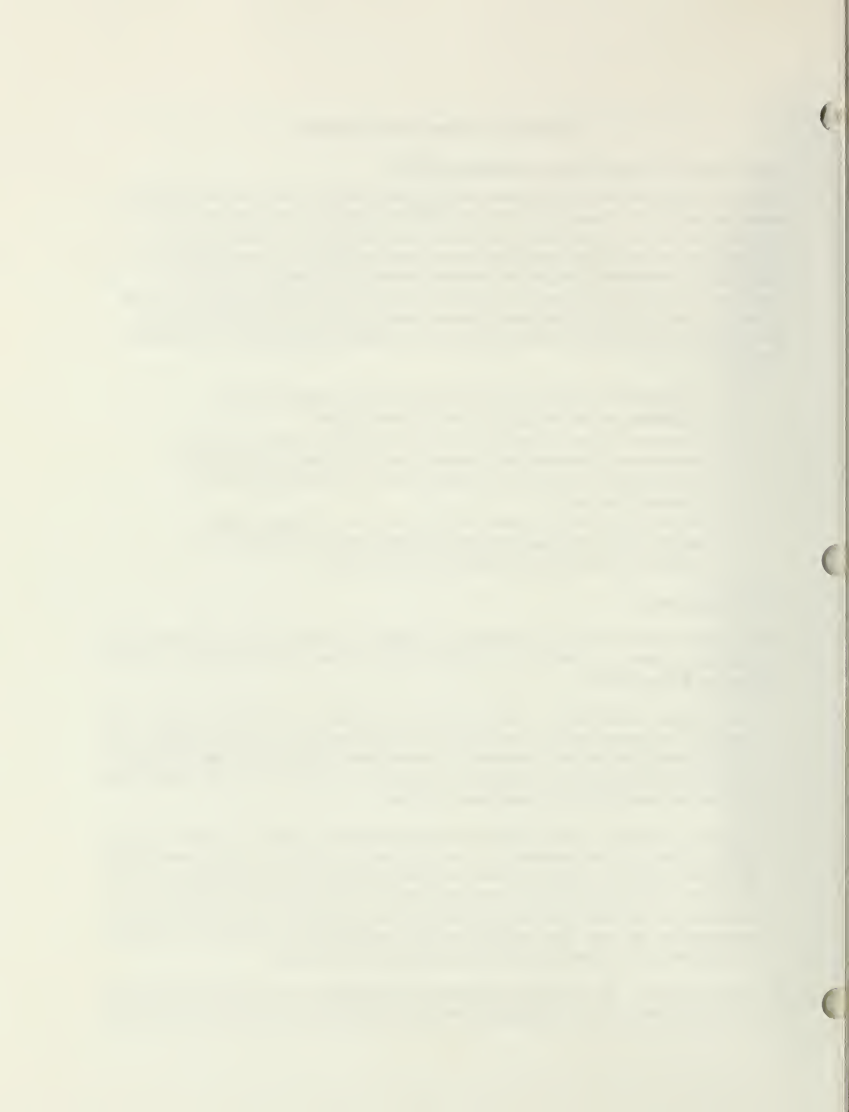
On May 2, 1997, the Board of Supervisors of the City and County of San Francisco (the "City") authorized the Mayor's Treasure Island Project Office to establish the Authority as a California nonprofit public benefit corporation for the purpose of overseeing and implementing the redevelopment, reconstruction, rehabilitation, reuse, and conversion of Treasure Island for the public interest, convenience, welfare and common benefit of the inhabitants of the City. Under the Treasure Island Conversion Act of 1997 (the "Act"), the California legislature sought to streamline the process of redeveloping Treasure Island by granting the Authority all of the powers needed to further the conversion of the Base to productive civilian reuse. Among other things, the Act :

- Designated the Authority as a redevelopment agency under California redevelopment law with authority over Treasure Island;
- Granted the Authority the right to administer the public trust for commerce, navigation and fisheries (the "Tidelands Trust") as to those areas of Treasure Island which are former tide or submerged lands, and thus subject to the Tidelands Trust; and
- Provided the Authority with the ability to sell, lease, exchange, transfer, convey or otherwise grant interests in or rights to use or occupy all or any portion of the real property located on Treasure Island.

### Project Management

The Treasure Island Development Authority has managed several consultant contracts and has the in-house expertise to oversee the proposed scope of work. Past and current project management efforts include:

- *Environmental Remediation.* The Authority is managing a \$500,000 contract with Geomatrix to oversee the Navy's environmental remediation efforts at Treasure Island. This contract includes the review of data related to investigation, sampling and characterization of sites conducted by the Navy, oversight and comment on work plans for remedial activities on the Base, and on-site review of remediation activities.
- *Property Acquisition.* The Authority recently completed a \$280,000 contract with the Sedway Group for the production of an Economic Development Conveyance (EDC) application to the Navy. The work effort included the preparation of technical reports related to specific subject material (e.g., capital improvements, market analysis, public finance), the creation of an illustrative land use program for reuse of the Base, and a business plan for implementing the plan that satisfied the dual requirements of the EDC - economic development of the property (job generation) and financial feasibility.
- *Interim Leasing.* The Authority management responsibility for a contract with the John Stewart Company for the rehabilitation, marketing, and leasing of 766-market rate housing



units at Treasure Island. The contract requires the investment of \$12 million in private capital to rehabilitate housing units and related areas, including seismic upgrades to meet the FEMA-178 life safety standards.

- *Caretaker Services.* Since operational closure of the Base, the Authority has administered \$12.5 million in cooperative agreement funding provided by the U.S. Navy. These funds have been programmed for management and operation of the utility systems, ongoing repair and maintenance of buildings and roadways, provision of public safety services, and landscaping and general property management.

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## **Attachment D - Problem**

**The History of Naval Base Treasure Island:** Naval Station Treasure Island history dates back to early occupation of Yerba Buena Island by the U.S. Army in 1867 and subsequently by the Navy in 1898. As stated above, it was built for the purpose of hosting the Golden Gate International Exposition to celebrate the engineering marvels achieved by the completion of both the Golden Gate and Bay Bridges. The original plan was to hold the two-year long exposition, and then convert the island and related facilities into an international civilian airport. However, as the fair ended, American involvement in the Second World War was becoming certain, and upon the fair's closure in 1940 plans were underway to convert the island to a naval base.

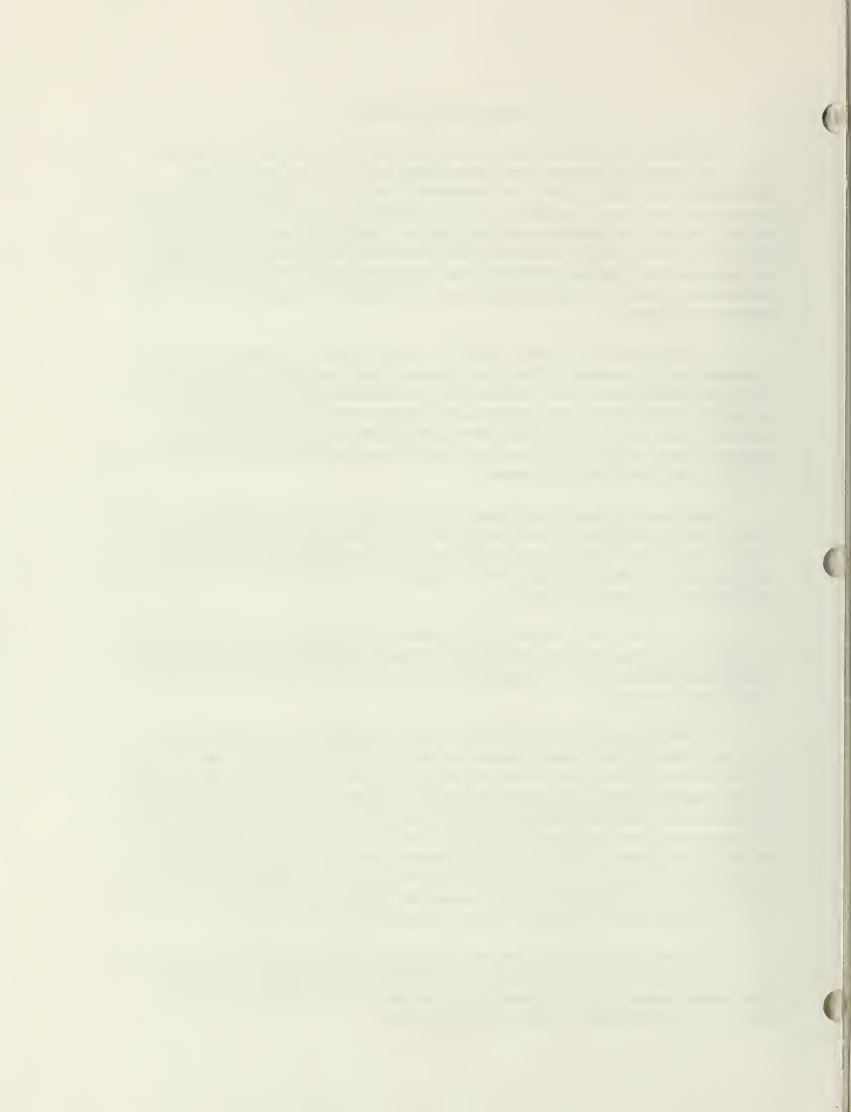
During World War II, Treasure Island was used as a center for receiving, training and dispatching service personnel. After the war, Treasure Island was primarily used as a naval training and administrative center. Approximately 3,000 military and 1,000 civilian personnel worked at the naval station. Some of the major functions were the Fleet Training Center; Commander Naval Base San Francisco; waterfront facilities; troop and family housing; personnel support including the processing of Pacific-bound and homecoming personnel; and an aviation, military and Exposition museum.

**Naval Base Treasure Island Closes:** In 1993, Congress and the President selected Naval Station Treasure Island for closure and disposition by the Base Realignment and Closure Commission ("BRAC") acting under Public Law 101-510 and its subsequent amendments. The closure of the Base, along with eight others in the region, was a significant blow to the economy, and contributed to a lengthy recession.

As part of the BRAC process, the Department of Defense subsequently designated the City and County of San Francisco and, then, the Treasure Island Development Authority as the Local Reuse Authority ("LRA") responsible for the conversion of Treasure Island under the federal disposition process.

In 1994, a Citizen's Reuse Committee ("CRC"), representing a broad spectrum of community interests, was formed to review reuse planning efforts regarding Treasure Island by the San Francisco Planning Department and the San Francisco Redevelopment Agency, and to make recommendations to the Planning Commission and Board of Supervisors. In July 1996, after an extensive community planning effort, the Draft Reuse Plan for Treasure Island Naval Station was unanimously endorsed by the Mayor, Board of Supervisors, Planning Commission and the Citizens Reuse Committee. The City forwarded the Reuse Plan to the Department of Defense in July 1996 to serve as the guiding document for the Navy and City in preparation of a joint Environmental Impact Statement/Environmental Impact Report (EIR/EIS). The document serves as the basis for the Preliminary Redevelopment Plan for Treasure Island.

The Reuse Plan emphasizes the need for Causeway and Shoreline stabilization and notes that, "Stabilization of the entire causeway and shoreline of Treasure Island is an essential improvement, making possible the reuse of the land near the water's edge by reducing the potential for lateral spreading during a major earthquake".



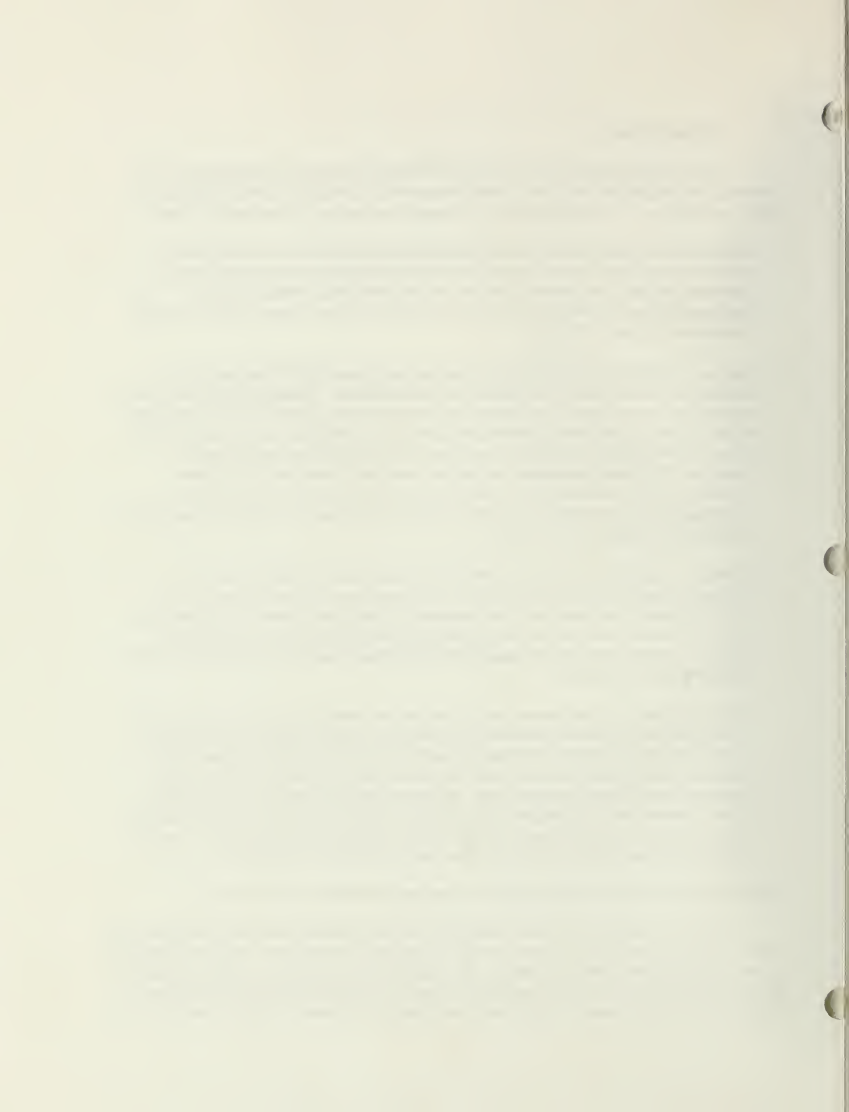
## Moving Forward

In the meantime the City and the Treasure Island Development Authority has moved forward in seeking projects which will bring revenue to the City and become an attraction for visitors and residents. The following describe several successes of the Authority to date:

- *Housing* Approximately 1,000 housing units located on the Base are currently being rehabilitated and leased as both market rate housing, through a seven-year management agreement with the John Stewart Company, and as transitional housing units for disadvantaged San Franciscans, under the administration of the Treasure Island Homeless Development Initiative (TIHDI).
- *Marina.* In 1999, the Authority issued a Request for Proposals (RFP) and selected a developer for a new Clipper Cove Marina at Treasure Island. Through negotiations with the selected marina developer, a preliminary development concept (Marina PDC) for the new marina has been created which includes 400 boat slips, a public pier, approximately 20,000 square feet of landslide development, and an extensive public promenade along the waterfront. The project is expected to span the entire south waterfront of the Island, including a narrow land-side band. Construction of the marina is expected to begin immediately upon conveyance of property (pending environmental remediation) and should be completed within one to two years.
- *Building 1.* Although the Authority intends to include Historic Building 1 in the development opportunity under this RFQ, it is expected that a substantial portion of the building's ground floor space would be occupied by a non-profit museum celebrating the history of Treasure Island and the area's naval and aviation history. The Authority has received a tremendous amount of interest in bringing the museum back to life and expects high visitation to the facility.
- *Public Facilities.* The northeastern side of the Treasure Island has already begun to evolve into a public facilities/institutional district supporting a variety of public uses including a modern, computer controlled, fire training facility operated by the San Francisco Fire Department and a sewage treatment plant operated by the San Francisco Public Utilities Commission. Additional proposed public facility projects in this portion of the Island include a Police Cadet Academy to be operated by the SFPD at the far northeastern side of Treasure Island around Building 461 (Austin Hall), and use of the existing Brig Complex, including Buildings 670 and 671, by the San Francisco Sheriff's Department.

### Submission of the Economic Development Conveyance (EDC) to the U.S. Navy:

On June 14, 2000, the Treasure Island Development Authority authorized the transmittal of an Economic Development Conveyance (EDC) application to the Navy for the acquisition of former Naval Station Treasure Island. The purpose of the EDC is to allow communities adversely affected by base closures to acquire property for economic development purposes, i.e., to replace jobs lost to closure. Based on recent changes to Federal law, EDC's are now to be



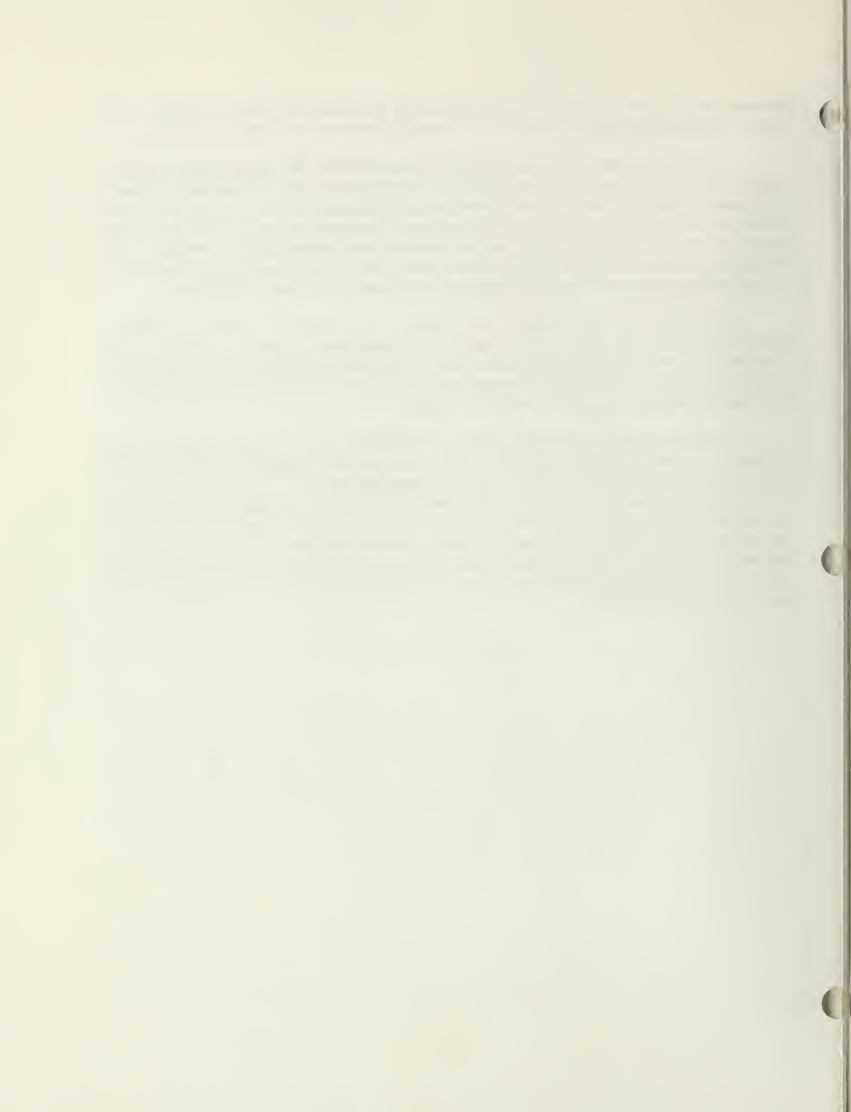


conveyed at "no cost", subject to certain recoupment provisions in favor of the Navy. The number of jobs lost at Treasure Island is 1,232, including both civilian and military positions.

The EDC submitted to the Navy meets both the guidelines and requirements set forth in the Base Reuse Implementation Manual (BRIM). As part of that effort, the Authority prepared an Illustrative Land Use Plan that is consistent with principles set forth in the Draft Reuse Plan. The Illustrative Land Use Plan serves as the framework to evaluate the financial feasibility of the project and the number of jobs that would be generated from redevelopment of the Base - the two primary requirements of the EDC process. In addition, the EDC application contains the general business terms under which the Authority would accept conveyance of the Base.

Concurrent with EDC process, the Authority has begun the process of soliciting developer interest in the Base. The selection of a development concept will allow for the coordination of the various infrastructure and other public improvements necessary to rebuild the base. . As part of the business plan prepared for the EDC, the costs for seismic stabilization of the Island, including the causeway, were \$47.5 million.

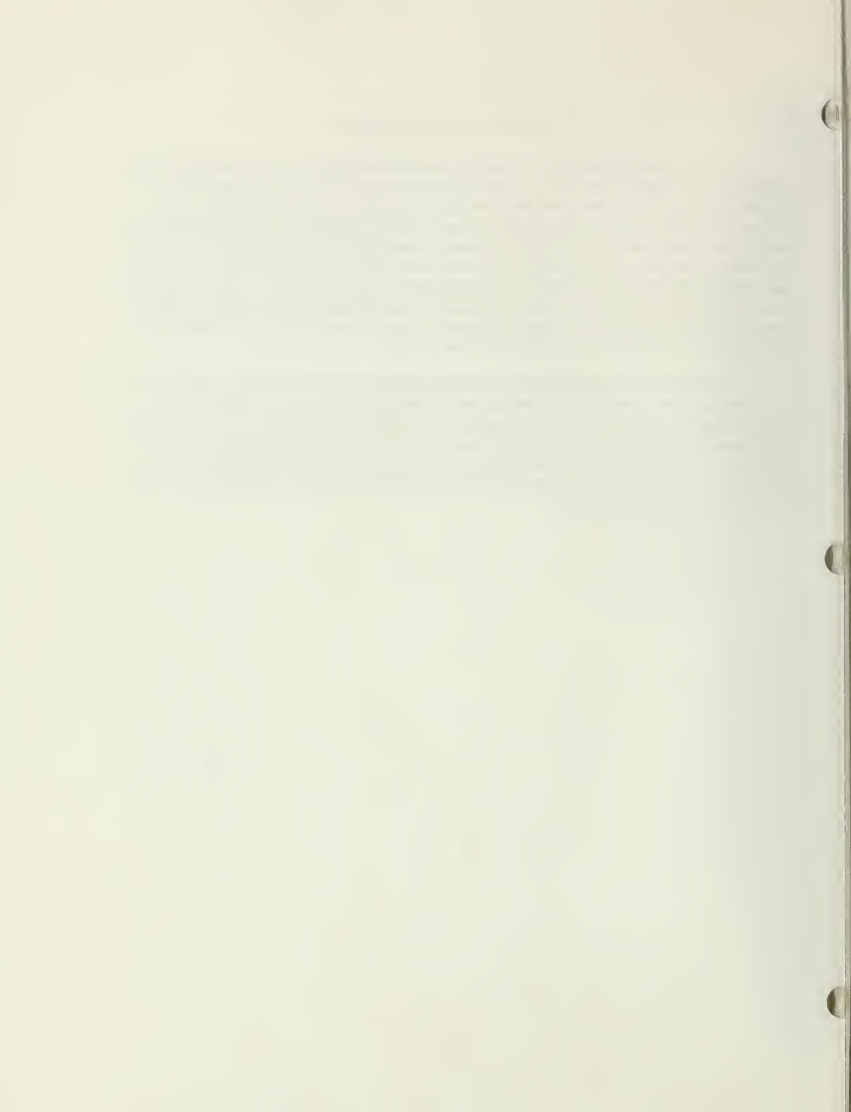
The business plan for the EDC indicates that redevelopment of Treasure Island, and thus replacement of lost jobs, will be difficult to achieve given the low projected rate of return on the project, partly because of the enormous costs of infrastructure repair. As a result, the Authority is seeking opportunities to assist in the development effort, thereby reducing development costs and increasing the return to the selected development team. One improvement that is critical to the long-term success of the project and provision of current and future economic development opportunities is required seismic improvements. If the seismic stabilization of the Causeway was funded, the attractiveness of redevelopment and the replacement of jobs on Treasure Island, will become a stronger probability.



### **Attachment E - Project Impact**

The loss of approximately 1,200 military and 750 civilian jobs on Treasure Island was a small part of the total job loss and diminution of economic activity from the closure of seven military bases in the Bay Area from 1993 through 1997. In fact, according to the East Bay Conversion and Reinvestment Commission, a total of 15,000 civilian were lost in the Bay Area during those years. On June 14, 2000, the Treasure Island Development Authority submitted an application for an Economic Development Conveyance (EDC) to the United States Navy. As part of the application and its illustrative Land Use Plan, it is estimated that the redevelopment of Naval Station Treasure Island will generate more than 5,000 permanent jobs, almost twice the number that were lost with Base closure. Construction activity and interim reuse for film and event production will create almost 5,000 short-term jobs.

Currently, the Treasure Island Homeless Development Initiative (TIHDI) operates a job broker program for unemployed, underemployed, dislocated or low-income workers. This program currently employs 66 full-time workers on several projects on both islands. Permanent employment from redevelopment includes jobs in the service, tourism and recreation industries, including a substantial number of entry-level positions. Delaying the stabilization of the Causeway may jeopardize the creation and retention of jobs generated by both interim use and long-term redevelopment projects.







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**MINUTES FOR REGULAR MEETING  
JANUARY 10, 2001**

1:12 P.M. Room 400, City Hall  
1 Dr. Carlton Goodlett Place

1. Roll Call: Present: John Elberling - Vice Chair, James Maorales, William Fazande, Anne Halsted, Gerald Green, Susan Po-Rufino (1:30pm.)

Excused: Doug Wong

2. Approval of Minutes - The minutes of December 21, 2000 were approved unanimously.

3. Communications: London Breed, Commission Secretary, reported that there were no communications.

Public Access - Ms. Conroy reported on upcoming events and activities on Treasure Island

Treasure Island Chapel - Ms. Conroy report on public use of the Chapel was requested as a special item in the Director's Report at this meeting. Staff has recommended creating off-peak hours for use of Chapel at \$75.00/hour, with a minimum of 3 hours to cover staff time and cleanup. The Chapel will be available on a nondiscriminatory, first come, first serve basis, as set forth in the legal opinion from the City Attorney's office. We have sent a letter to anyone who has expressed an interest in the Chapel that off-peak hours are available.

Deputy city attorney, Donnell Choy stated that the Chapel could be offered for religious worship, so long as it is done in an equal, nondiscriminatory basis with religious and non-religious groups being treated the same.

Environmental cleanup - The Navy has been continuing cleanup efforts on Site 12. TIHDI will begin rehab of their units once it has been determined that all of the units are safe for occupancy and DTSC has concurred with the Navy on this issue.

The Navy has started asbestos and lead paint removal from YBI. Mr. Elberling asked how many units are held up with this remediation process. Ms. Conroy replied that some of the John Stewart units are being held up on YBI and TI due to lead paint and asbestos removal. The project office sent a letter to Navy Secretary Cassidy regarding TIHDI units to see if he can speed up the testing and remediation plan. Mr. Elberling asked how many units are being held up. Stephen Proud, Development Director replied that TIHDI is waiting for 96 units and John Stewart is waiting for 140 units.

Mr. Elberling asked if the hold-up is having a fiscal impact on the John Stewart Company. Ms. Conroy replied it has had an impact from last year. The Navy was expected to deliver these units in August 1999. The project office has suggested that the Navy release the units that have been cleaned up. Mr. Elberling asked if the TIDA Board could be informed the next meeting about the fiscal impact of the delay.

Short-term leases - There are no new short-term leases.

Bay Bridge - We continue to negotiate with the governor's office on mitigation

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packages.

Community Issues - On the convenience store, the project office has received some interest. We are talking again with grocers and different associations to see if a small neighborhood-serving store would be appropriate and financible. The project office talked with the Mayor's Office of Community Development about funding for a convenience store as well.

The Project office has been given additional funding to increase Muni service to the island. The Transbay terminal is a big concern with reports of pushing and shoving to board the bus. Captain Richard Cairns, SFPD, has put some people on the buses to ride it regularly back to the Island.

There is a community meeting on January 17, 2001 and a citizen's advisory board (CAB) meeting on the January 18, 2001. The CAB has met and adopted their by-laws.

TIHDI - Ms. Conroy replied that she has already reported on clean up and the status of the units. The other issue is funding for TIHDI; they have made a request to increase their budget.

Financial report - A detailed report will be provided next meeting.

Legislation and hearing affecting TI - there are none.

Mr. Conroy replied that the Project office will be visiting and briefing the new Board of Supervisors on the project and Chris Daly, District 6 Supervisor, will attend the community meeting on the January 17, 2001.

4. Resolution authorizing and endorsing submission of a grant application to the Economic Development Administration, an agency of the United States Department of Commerce, for \$202,500 for the development of plans and specifications for the seismic strengthening of the Causeway.

Joan Rummelsburg, Director of Special Projects, stated that there are three parts to this resolution. The first is authorization to go forward with the \$205,500 application. The second is reaffirmation of the reuse plan as the guiding document for the reuse and development of TI. The third is authorization permitting the Executive Director to accept the grant funds if approved. The project office has received word from the State that we will receive \$67,500 as a portion of a local match for this project. This is the first of two phases of the project. It includes an assessment of the damage to the causeway from the 1989 earthquake. We are looking for alternatives to stabilize the causeway. The second phase would be the actual stabilization of the causeway. These two sources of funds would be the total needed for the project. Our chances are excellent with the reaffirmation of the reuse plan today as our guiding document. Plan B would be the Master Developer would have to start looking for funding.

Ms. Halsted moved. Mr. Fazande seconded. Approved 6-0.

8. Meeting adjourned at 1:34 PM.

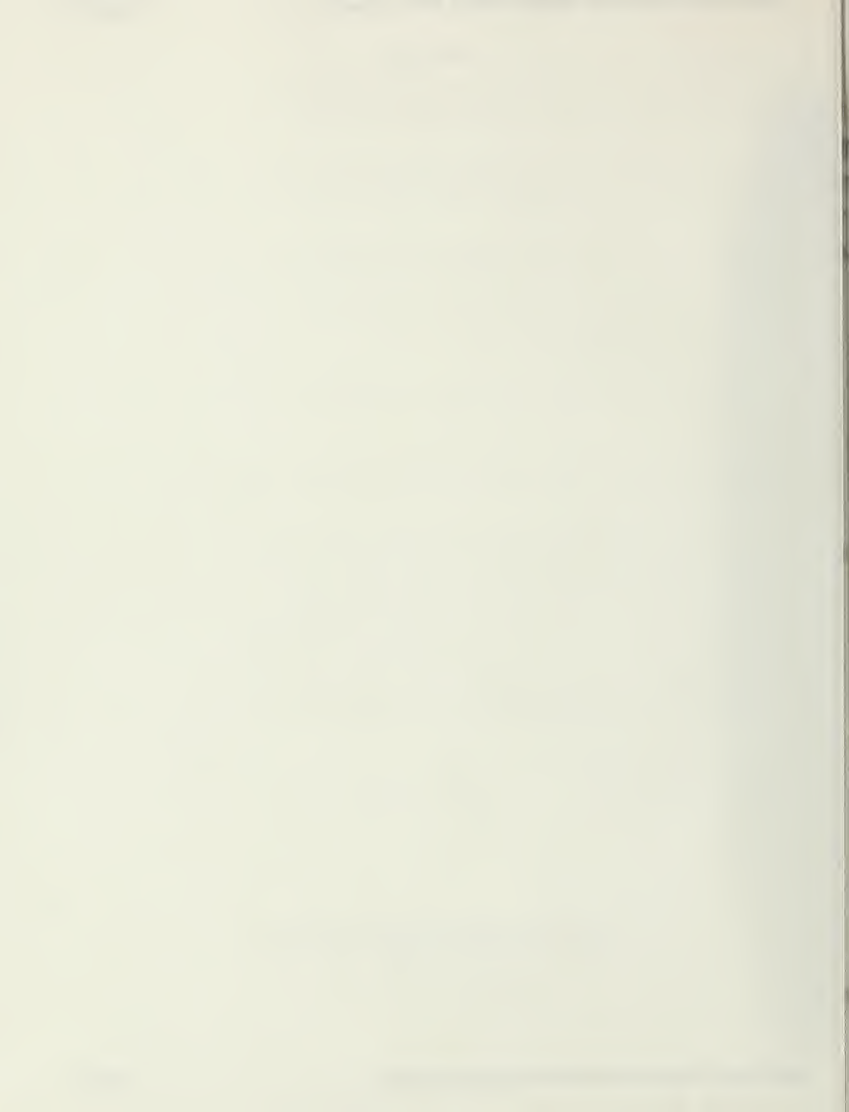
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TREASURE ISLAND PROJECT  
410 AVENUE OF THE PALMS  
BUILDING 1, 2ND FLOOR  
TREASURE ISLAND  
SAN FRANCISCO, CA 94130  
(415) 274-0660  
FAX (415) 274-0299

14/01  
**TREASURE ISLAND DEVELOPMENT AUTHORITY**

**MEETING AGENDA**

**Wednesday, February 14, 2001 1 P.M. DOCUMENTS DEPT.**

Room 400, City Hall  
1 Dr. Carlton Goodlett Place

Willie L. Brown, Jr., Mayor

FEB - 9 2001

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**DIRECTORS**

John Elberling, Vice-Chairman  
William Fazande  
Susan Po-Rufino  
Doug Wong

Gerald Green  
Anne Halsted  
James Morales

Annemarie Conroy, Executive Director

London Breed, Commission Secretary

**ORDER OF BUSINESS**

1. Call to Order and Roll Call

**POSSIBLE CLOSED SESSION**

*\*\*\*If approved by the TIDA Board, Closed Session will take place for approximately 45 minutes at the beginning of the meeting\*\*\**

- Public Comment on all items relating to closed session
- Vote on whether to hold closed session to confer with legal counsel. (San Francisco Administrative Section 67.11 (b). *Action item*)

**2. CONFERENCE WITH REAL PROPERTY NEGOTIATOR**

Persons negotiating for the Authority: Annemarie Conroy, Stephen Proud, Michael Cohen

Persons negotiating with the Authority: Prospective Master Developers

Property: Former Naval Station Treasure Island

Under Negotiation: Price\_\_\_ Terms\_\_\_ Both X

**3. Reconvene in open session (*Action item*)**

- Possible report on action taken in closed session. (Government Code section 54957.1 (a) (2) and San Francisco Administrative Code section 67.14 (b) (2).)
- Vote to elect whether to disclose any or all discussions held in closed session (San Francisco Administrative Code section 67.14 (a).)

4. Approval of Minutes (*Action item*)
5. Communications (*Discussion item*)
6. Report of the Treasure Island Project Director Annemarie Conroy (*Discussion item*)
  - Report on access to Treasure Island including public use last month
  - Status of environmental clean up
  - Report on short-term leases
  - Report on San Francisco-Oakland Bay Bridge/Caltrans issues
  - Report on Treasure Island community issues
  - Report on Citizens Advisory Committee
  - Report on TIHDI
  - Financial Report
  - Legislation/hearings affecting Treasure Island
7. General Public Comment (*Discussion Item*)
8. Ongoing Business by Directors and Introduction of New Business by members (*Discussion Item*)
9. Resolution authorizing the Executive Director to Extend a Month-to-Month Sublease and increase the monthly rent for Building 1, Room 307 with the San Francisco District Attorney's Office (*Action Item*)
10. Resolution authorizing the Executive Director to amend a license with the U.S. Navy and a Subleases with the San Francisco Little League to extend the term for use of the little league field (*Action item*)
11. Adjourn

*Relevant documents such as resolutions, staff summaries, leases, subleases are available at the Treasure Island Project Office and the Government Information Center at the Main Library, 100 Larkin Street. Public comment is taken on each item on the agenda.*

#### MEETING AGENDAS NOW AVAILABLE ON E-MAIL

If you would like to receive TIDA meeting agendas by e-mail, rather than through U.S Postal Service mail, please send your name and e-mail address to [TIDA@ci.sf.ca.us](mailto:TIDA@ci.sf.ca.us).

#### Disability Access

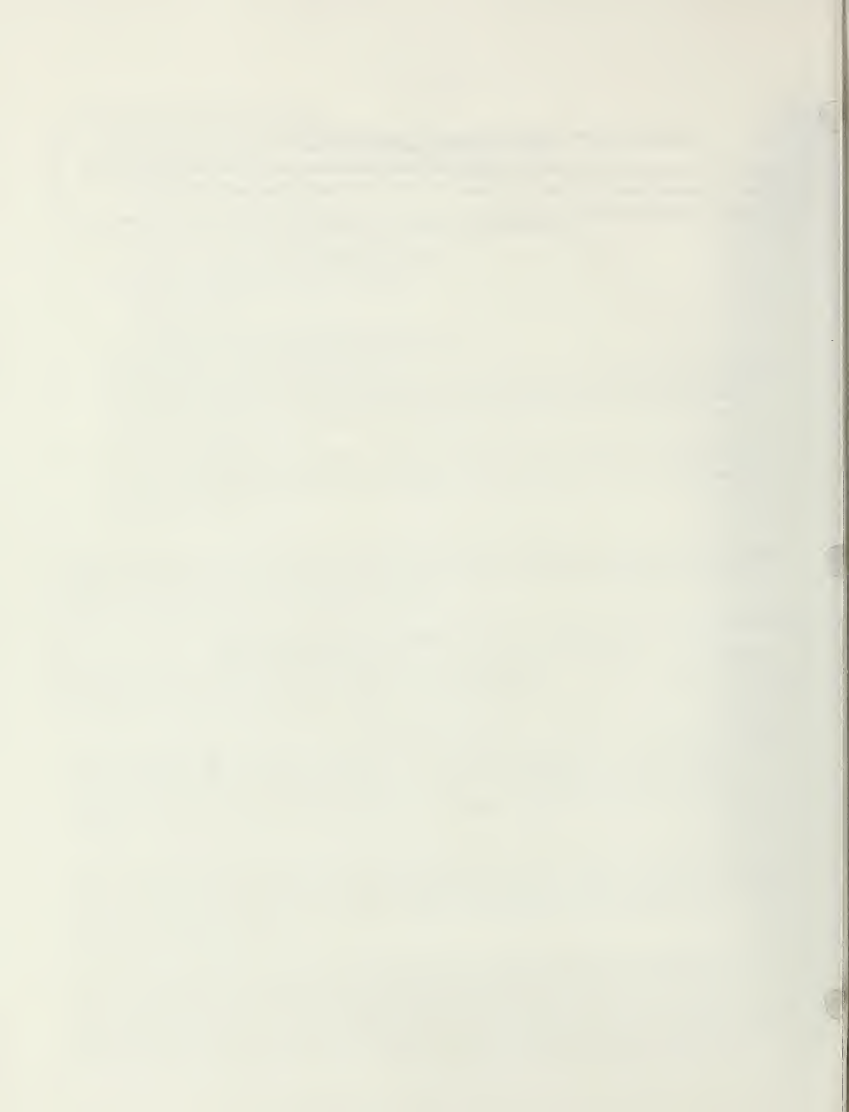
The Treasure Island Development Authority will meet at City Hall, 1 Dr. Carlton Goodlett Place. City Hall is accessible to persons using wheelchairs, and others with disabilities. For American Sign Language interpreters or use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please telephone 554-6789 at least 72 hours before a meeting.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

The closest accessible BART is Civic Center, three blocks from the City Hall at the intersection of Market, Grove and Hyde Streets. Accessible MUNI lines serving this location are: #42 Downtown Loop, 9 San Bruno and the #71 Haight/Norica. Accessible Muni Metro lines are J, K, L, M and N stopping at the Muni Metro Civic Center Station at Market and Van Ness. For more information about MUNI accessible services, call 923-6142. Accessible curbside parking is available on Grove Street.

#### **TREASURE ISLAND WEBSITE**

Check out the Treasure Island website at [www.ci.sf.ca.us/treasureisland](http://www.ci.sf.ca.us/treasureisland) to find out about activities and facilities on Treasure Island, special events venues for rent, or to review the Treasure Island Development Authority's agendas and minutes.





















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**Minutes of Meeting**  
**Treasure Island Development Authority**  
January 10, 2001

1. Call to order: 1:12 PM in Room 400 in City Hall

Roll Call: Present: John Elberling, Vice-Chair  
William Fazande  
Gerald Green  
Anne Halsted  
James Morales  
Susan Po-Rufino (1:30 PM)

Excused: Doug Wong

2. Approval of minutes: The minutes of December 21, 2000 were approved unanimously.
3. Communications: London Breed, Commission Secretary, reported that there were no communications.
4. Director's Report given by Annemarie Conroy, Executive Director for TIDA.
- Public Access - Ms. Conroy reported on upcoming events and activities on Treasure Island
  - Treasure Island Chapel - Ms. Conroy report on public use of the Chapel was requested as a special item in the Director's Report at this meeting. Staff has recommended creating off-peak hours for use of Chapel at \$75.00/hour, with a minimum of 3 hours to cover staff time and cleanup. The Chapel will be available on a nondiscriminatory, first come, first serve basis, as set forth in the legal opinion from the City Attorney's office. We have sent a letter to anyone who has expressed an interest in the Chapel that off-peak hours are available.  
Deputy city attorney, Donnell Choy stated that the Chapel could be offered for religious worship, so long as it is done in an equal, nondiscriminatory basis with religious and non-religious groups being treated the same.
  - Environmental cleanup - The Navy has been continuing cleanup efforts on Site 12. TIHDI will begin rehab of their units once it has been determined that all of the units are safe for occupancy and DTSC has concurred with the Navy on this issue.  
The Navy has started asbestos and lead paint removal from YBI. Mr. Elberling asked how many units are held up with this remediation process. Ms. Conroy replied that some of the John Stewart units are being held up on YBI and TI due to lead paint and asbestos removal. The project office sent a letter to Navy Secretary Cassidy regarding TIHDI units to see if he can speed up the testing and remediation plan.  
Mr. Elberling asked how many units are being held up. Stephen Proud, Development Director replied that TIHDI is waiting for 96 units and John Stewart is waiting for 140 units.  
Mr. Elberling asked if the hold-up is having a fiscal impact on the John Stewart Company. Ms. Conroy replied it has had an impact from last year. The Navy was expected to deliver these units in August 1999. The project office has suggested that the Navy release the units that have been cleaned up.  
Mr. Elberling asked if the TIDA Board could be informed the next meeting about the fiscal impact of the delay.
  - Short-term leases - There are no new short-term leases.
  - Bay Bridge - We continue to negotiate with the governor's office on mitigation packages.
  - Community Issues - On the convenience store, the project office has received some interest. We are talking again with grocers and different associations to see if a small neighborhood-serving store would be

appropriate and financeable. The project office talked with the Mayor's Office of Community Development about funding for a convenience store as well.

The Project office has been given additional funding to increase Muni service to the island. The Transbay terminal is a big concern with reports of pushing and shoving to board the bus. Captain Richard Cairns, SFPD, has put some people on the buses to ride it regularly back to the Island.

There is a community meeting on January 17, 2001 and a citizen's advisory board (CAB) meeting on the January 18, 2001. The CAB has met and adopted their by-laws.

- TIHDI – Ms. Conroy replied that she has already reported on clean up and the status of the units. The other issue is funding for TIHDI; they have made a request to increase their budget.
- Financial report - A detailed report will be provided next meeting.
- Legislation and hearing affecting TI - there are none.

Mr. Conroy replied that the Project office will be visiting and briefing the new Board of Supervisors on the project and Chris Daly, District 6 Supervisor, will attend the community meeting on the January 17, 2001.

7. Resolution authorizing and endorsing submission of a grant application to the Economic Development Administration, an agency of the United States Department of Commerce, for \$202,500 for the development of plans and specifications for the seismic strengthening of the Causeway.

Joan Rummelsburg, Director of Special Projects, stated that there are three parts to this resolution. The first is authorization to go forward with the \$205,500 application. The second is reaffirmation of the reuse plan as the guiding document for the reuse and development of TI. The third is authorization permitting the Executive Director to accept the grant funds if approved. The project office has received word from the State that we will receive \$67,500 as a portion of a local match for this project. This is the first of two phases of the project. It includes an assessment of the damage to the causeway from the 1989 earthquake. We are looking for alternatives to stabilize the causeway. The second phase would be the actual stabilization of the causeway. These two sources of funds would be the total needed for the project. Our chances are excellent with the reaffirmation of the reuse plan today as our guiding document. Plan B would be the Master Developer would have to start looking for funding.

Ms. Halsted moved. Mr. Fazande seconded. Approved 6-0

8. Meeting adjourned at 1:34 PM.























**TREASURE ISLAND DEVELOPMENT AUTHORITY  
City and County of San Francisco**

**Agenda Item No. 9**

**February 14, 2000**

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**Subject:** Resolution authorizing the Authority to increase the monthly rent and extend a month-to-month Sublease with the San Francisco District Attorney's Office for the use of Room 307, Building 1.

**Staff Contact:** London Breed, Development Specialist 274-0665

**SUMMARY OF PROPOSED ACTION**

The staff is requesting the Authority to adopt a resolution to continue a month-to-month sublease and increase the monthly rental rate with the San Francisco District Attorney's Office for use of Room 307 in Building 1 as office space on the same terms as the original sublease dated July 17, 2000.

**DISCUSSION**

The sublease provides for use of Room 307 in Building 1 by the District Attorney's Office for office space and for no other purpose. Since July 17, 2000 the Bad Check Unit of the District Attorney's Office occupied Room 307 in Building 1. Recently a space was made available at 850 Bryant Street, and the Bad Check Unit moved out of Building 1 on December 22, 2000. The District Attorney's Office continued to maintain their sublease and has asked to extend the term of the sublease by an additional one-year. The DA's office moved the Asset Forfeiture Unit to Room 307 in Building 1 on February 12, 2001. The monthly base rent would increase from Two Thousand Seven Hundred Dollars (\$2,700) to Three Thousand Dollars (\$3,000) effective February 1, 2001 to cover the increased administrative and utilities cost for the project office. Under the Authority's Rules and Procedures for the transfer of Real Property, continuation of the sublease on a month-to-month basis for up to one additional year requires Authority approval.

**RECOMMENDATION**

Staff recommends approval for the Authority to increase the monthly rent and continue a month-to-month sublease with the District Attorney's Office for an additional one-year term. Further continuation of the Sublease beyond December 31, 2001 would require additional Authority approval.

## EXHIBITS

Amendment to the Sublease dated February 1, 2001

Original Sublease dated July 17, 2000

[Continuation of Month-to-Month Sublease of Building 1, Room 307]  
AUTHORIZING THE EXECUTIVE DIRECTOR TO EXTEND A MONTH-TO-MONTH  
SUBLEASE AND INCREASE THE MONTHLY RENT FOR BUILDING 1, ROOM 307 WITH  
THE SAN FRANCISCO DISTRICT ATTORNEY'S OFFICE.

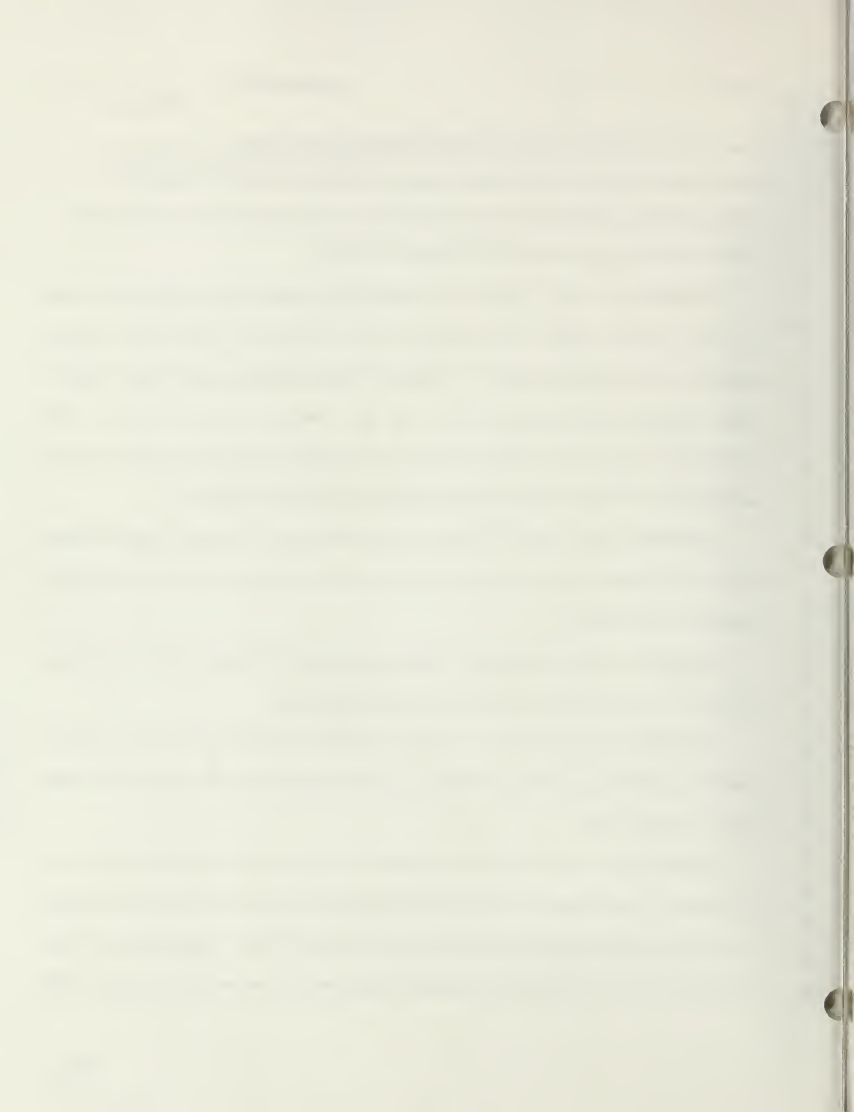
**WHEREAS**, on July 17, 2000, the Authority's Executive Director, acting under Section 10 of the Authority's Rules and Procedures for the Transfer and Use of Real Property, adopted by the Authority on March 11, 1998 (the "Transfer Rules"), entered into a month-to-month sublease (the "Sublease"), with the San Francisco District Attorney's Office ("Subtenant") for the use of a portion of Building 1 (the "Initial Premises") for office space at a rental rate of Two Thousand Seven Hundred Dollars (\$2,700) per month; and

**WHEREAS**, under Section 10 of the Transfer Rules, even a month-to-month sublease has to be separately approved by the Authority if the cumulative term of such sublease exceeds six months; and

**WHEREAS**, Subtenant wishes to continue to occupy the Premises under the Sublease on a month-to-month basis for an additional twelve months; and

**WHEREAS**, Sublandlord has increased the rental rate effective February 1, 2001 to three thousand dollars (\$3,000) per month to cover the increased administrative and utilities cost; now therefore be it

**RESOLVED:** That the Board of Directors hereby approves and authorizes the continuation of the Sublease on a month-to-month basis for up to twelve months and increase the monthly rental rate thereof to \$3,000 per month as set forth in the Amendment to the Sublease attached as Exhibit A; provided that nothing herein shall limit the Authority's ability





1 to terminate the Sublease on thirty days notice as provided in the Sublease and provided  
2 further that any continued occupancy of the Premises under the Sublease past January 31,  
3 2002 shall require the separate approval of the Authority.

4  
5 **CERTIFICATE OF SECRETARY**

6 **I hereby certify that I am the duly elected and acting Secretary of the**  
7 **Treasure Island Development Authority, a California nonprofit public benefit**  
8 **corporation, and that the above Resolution was duly adopted and approved by the**  
9 **Board of Directors of the Authority at a properly noticed meeting on February 14,**  
10 **2001.**  
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13 John Elberling  
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**AMENDMENT TO  
SUBLEASE  
between  
THE TREASURE ISLAND DEVELOPMENT AUTHORITY  
as Sublandlord**

**and**

**San Francisco District Attorney's Office  
as Subtenant**

**For the Sublease of  
Building 1, Room 307 at  
Naval Station Treasure Island  
San Francisco, California**

**February 1, 2001**



**AMENDMENT TO  
TREASURE ISLAND SUBLEASE**

THIS AMENDMENT TO SUBLEASE (the "Amendment"), dated as of February 1, 2001, is entered into by and between the Treasure Island Development Authority ("Sublandlord") and the San Francisco District Attorney's Office ("Subtenant"). From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Amendment is made with reference to the following facts and circumstances:

- A. On or about July 17, 2000, Sublandlord and Subtenant entered into that certain sublease agreement (hereafter, the "Sublease") for the sublease of Room 307 at Building One consisting of approximately 1,200 square feet on Naval Station Treasure Island, all as shown on Exhibit B of the Sublease.
- B. The Parties wish to amend the Sublease to continue the sublease on a month-to-month basis for an additional twelve months.
- C. The Sublandlord wishes to increase the monthly rental rate to \$3,000 per Month to cover increased administrative and utilities cost.

NOW THEREFORE, Sublandlord and Subtenant agree to amend the Sublease as follows:

1. The first sentence to **paragraph 3.1** of the Sublease is hereby amended to read as follows:  
  
"**3.1 Term of Sublease.** The term of the Sublease shall commence on July 18, 2000 (the "Commencement Date") and continue on a month to month basis expiring on December 31, 2001 (the "Expiration Date"), unless sooner terminated or extended pursuant to the terms of the Subleases.
2. The first sentence to paragraph 4.1 of the Sublease is hereby amended to read as follows:  
  
"**4.1 Base Rent.** Beginning on February 1, 2001 and continuing throughout the remainder of the Term, Subtenant shall pay to Sublandlord Three Thousand Dollars (\$3,000.00)(the "Base Rent")."
3. Except as expressly modified herein, all other terms, conditions, and covenants of the Sublease shall remain in full force and effect.

Sublandlord and Subtenant have executed this Sublease in triplicate as of the date first written above.

**SUBTENANT:**



**City and County of San Francisco acting by and  
Through its District Attorney's Office,**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

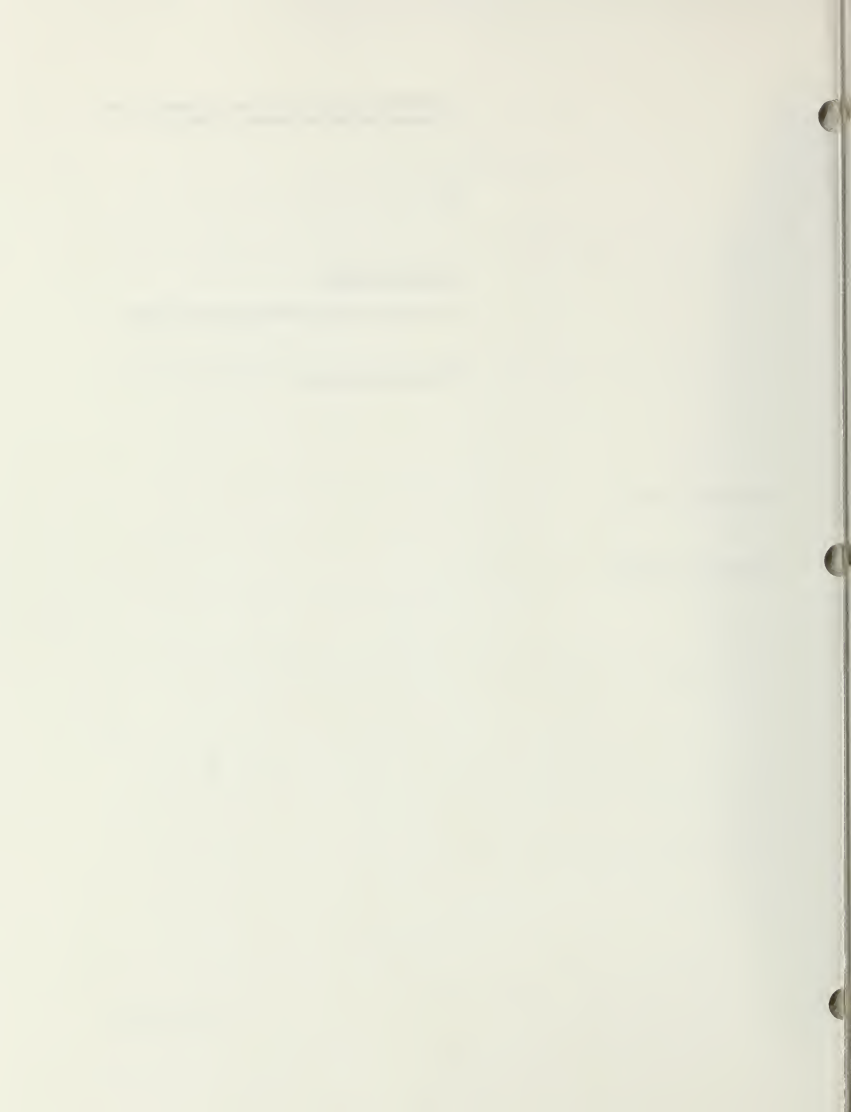
**SUBLANDLORD:**

**The Treasure Island Development Authority**

By: \_\_\_\_\_  
Its: Executive Director

Approved as to Form:

\_\_\_\_\_  
Deputy City Attorney









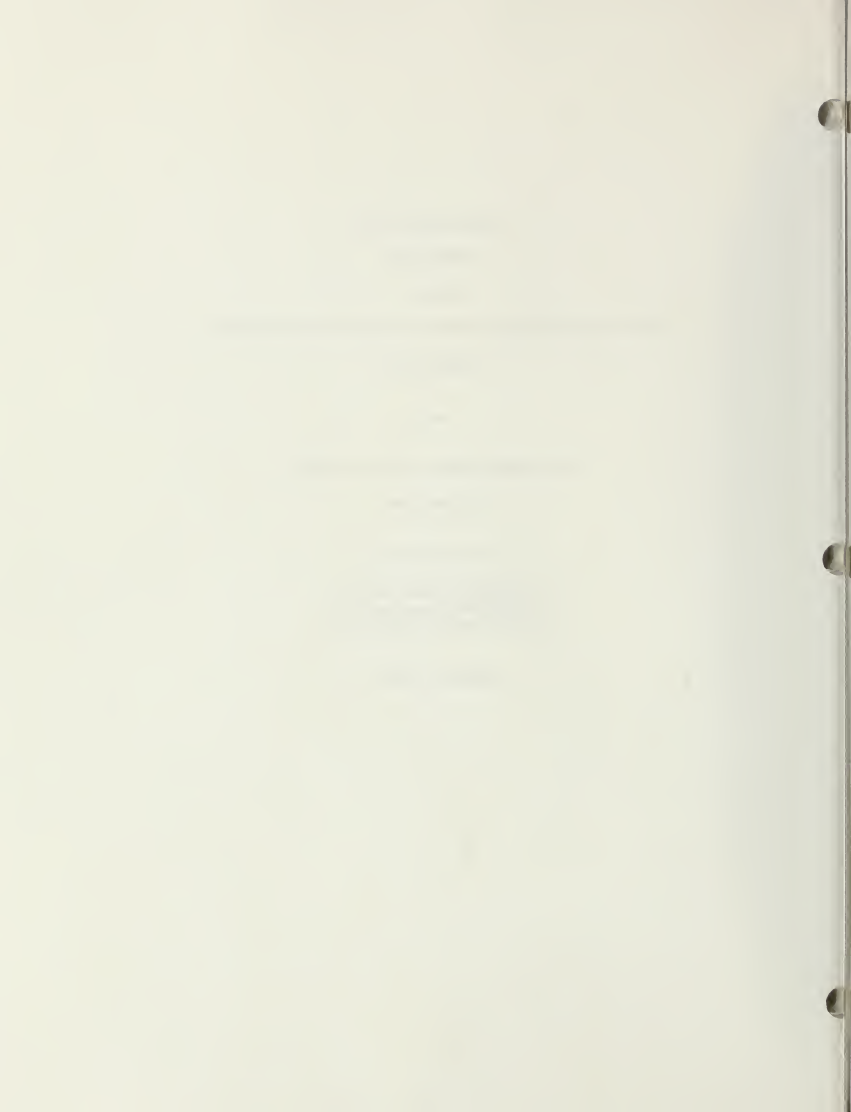
AMENDMENT TO  
SUBLEASE  
between  
THE TREASURE ISLAND DEVELOPMENT AUTHORITY  
as Sublandlord

and

San Francisco District Attorney's Office  
as Subtenant

For the Sublease of  
Building 1, Room 307 at  
Naval Station Treasure Island  
San Francisco, California

February 1, 2001



**AMENDMENT TO  
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THIS AMENDMENT TO SUBLEASE (the "Amendment"), dated as of February 1, 2001, is entered into by and between the Treasure Island Development Authority ("Sublandlord") and the San Francisco District Attorney's Office ("Subtenant"). From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Amendment is made with reference to the following facts and circumstances:

- A. On or about July 17, 2000, Sublandlord and Subtenant entered into that certain sublease agreement (hereafter, the "Sublease") for the sublease of Room 307 at Building One consisting of approximately 1,200 square feet on Naval Station Treasure Island, all as shown on Exhibit B of the Sublease.
- B. The Parties wish to amend the Sublease to continue the sublease on a month-to-month basis for an additional twelve months.
- C. The Sublandlord wishes to increase the monthly rental rate to \$3,000 per Month to cover increased administrative and utilities cost.

NOW THEREFORE, Sublandlord and Subtenant agree to amend the Sublease as follows:

1. The first sentence to **paragraph 3.1** of the Sublease is hereby amended to read as follows:

**"3.1 Term of Sublease.** The term of the Sublease shall commence on July 18, 2000 (the "Commencement Date") and continue on a month to month basis expiring on December 31, 2001 (the "Expiration Date"), unless sooner terminated or extended pursuant to the terms of the Subleases.

2. The first sentence to paragraph 4.1 of the Sublease is hereby amended to read as follows:

**"4.1 Base Rent.** Beginning on February 1, 2001 and continuing throughout the remainder of the Term, Subtenant shall pay to Sublandlord Three Thousand Dollars (\$3,000.00)(the "Base Rent")."

3. Except as expressly modified herein, all other terms, conditions, and covenants of the Sublease shall remain in full force and effect.

Sublandlord and Subtenant have executed this Sublease in triplicate as of the date first written above.

**SUBTENANT:**



**City and County of San Francisco acting by and  
Through its District Attorney's Office,**

By: \_\_\_\_\_  
Its: \_\_\_\_\_

**SUBLANDLORD:**

**The Treasure Island Development Authority**

By: \_\_\_\_\_  
Its: Executive Director

Approved as to Form:

\_\_\_\_\_  
**Deputy City Attorney**





**SUBLEASE**

**between**

**THE TREASURE ISLAND DEVELOPMENT AUTHORITY**

**as Sublandlord**

**and**

**San Francisco District Attorney's Office**

**as Subtenant**

**For the Sublease of**

**Building 1, Room 307 at  
Naval Station Treasure Island  
San Francisco, California**

**July 17, 2000**



## TREASURE ISLAND SUBLEASE

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**LIST OF EXHIBITS:**

EXHIBIT A -- Master Lease  
EXHIBIT B -- Drawing of the Property  
EXHIBIT C -- Drawing of the Premises  
EXHIBIT D -- Rules and Regulations  
EXHIBIT E -- Utilities

## TREASURE ISLAND SUBLEASE

THIS SUBLEASE (the "Sublease"), dated as of this 17th day of July 2000, is by and between the Treasure Island Development Authority ("Sublandlord") and City and County of San Francisco acting by and through its District Attorney's Office ("Subtenant"). From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Sublease is made with reference to the following facts and circumstances:

A. The United States of America, acting by and through the Department of Navy ("Master Landlord") and Sublandlord entered into a lease (the "Master Lease") dated September 5, 1998, a copy of which is attached hereto as Exhibit A. Under the Master Lease, the Master Landlord leased to Sublandlord all of Building 1 located on Treasure Island Naval Station (the "Property"), together with a non-exclusive right to use certain related parking, all as more particularly shown on the map attached hereto as Exhibit B (the "Premises").

B. Subtenant desires to sublet Room 307 of the Property (as depicted on Exhibit C, attached and hereafter referred to as the "Premises") from Sublandlord and Sublandlord is willing to sublet the Premises to Subtenant on the terms and conditions contained in this Sublease.

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

### **1. PREMISES**

**1.1. Subleased Premises.** Subject to the terms, covenants and conditions of this Sublease, Sublandlord subleases to Subtenant the Premises of Room 307 in Building 1, including the improvements thereon and the non-exclusive right to use 6 parking spaces shown on Exhibit C.

### **1.2. As Is Condition of Premises.**

(a) **Inspection of Premises.** Subtenant represents and warrants that Subtenant has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them, ("Subtenant's Agents") of the Premises and the suitability of the Premises for Subtenant's intended use. Subtenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses.

(b) **As Is; Disclaimer of Representations.** Subtenant acknowledges and agrees that the Premises are being subleased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties, including without limitation the orders and citations of any regulatory authority with jurisdiction over life and safety issues concerning the Premises ("Laws") governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Sublease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Subtenant acknowledges and agrees that neither Sublandlord, the City and County of San Francisco ("City"), nor any of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees or contractors, or their respective heirs, legal representatives, successors and assigns ("Sublandlord's Agents") have made, and Sublandlord hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, the matters described in the Seismic Report (as defined below) (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the feasibility, cost or legality of constructing any Alterations on the Premises if required for Subtenant's use and permitted under this Sublease, (v) the safety of the Premises, whether for the use of Subtenant or any other person, including Subtenant's Agents or Subtenant's clients, customers, vendors, invitees, guests, members, licensees, assignees or subtenants ("Subtenant's Invitees"), or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose or compliance with disability access laws.

## **2. COMPLIANCE WITH MASTER LEASE**

**2.1. Incorporation by Reference.** All of the terms and conditions of the Master Lease are hereby incorporated by reference into this Sublease as if fully set forth herein

**2.2. Conflict.** If any of the provisions of this Sublease conflict with any portion of the Master Lease as incorporated herein, then the terms of the Master Lease shall govern.

**2.3. Compliance with Master Lease.** Subtenant shall not do or permit to be done anything which would constitute a violation or a breach of any of the terms, conditions or provisions of the Master Lease or which would cause the Master Lease to be terminated or forfeited by virtue of any rights of termination reserved by or vested in the Master Landlord.

**2.4. Automatic Termination.** If the Master Lease terminates for any reason whatsoever, this Sublease shall automatically terminate and the Parties shall thereafter be relieved from all liabilities and obligations under this Sublease, except for liabilities and obligations which expressly survive termination of this Sublease. Subtenant acknowledges and agrees that it has reviewed the Master Lease, is aware of the circumstances upon which the Master Lease may be terminated and hereby assumes all risks associated with the automatic termination of this Sublease because of the termination of the Master Lease.

### **3. TERM**

**3.1. Term of Sublease.** The term of this Sublease shall commence on July 18, 2000 (the "Commencement Date") and continue on a month to month basis expiring on December 18, 2000 (the "Expiration Date"), subject to Section 3.2 below or unless sooner terminated or extended pursuant to the terms of the Sublease.

### **4. RENT**

**4.1. Base Rent.** Throughout the Term, beginning on the Commencement Date, Subtenant shall pay to Sublandlord Two Thousand Seven Hundred Dollars (\$2,700.00) (the "Base Rent") per month. Base Rent shall be paid to the Sublandlord without prior demand and without any deduction, setoff, or counterclaim whatsoever. Base Rent shall be payable on or before the first day of each month, in advance, at the Notice Address of Sublandlord provided in Section 20.1 hereof or such other place as Sublandlord may designate in writing. If the Commencement Date occurs on a date other than the first day of a calendar month, or the Sublease terminates on a day other than the last day of a calendar month, then the monthly payment of Rent for such fractional month shall be prorated based on a thirty (30) day month.

**4.2. Additional Charges.** In addition to Base Rent, Subtenant shall pay any and all real property taxes, possessory interest taxes and other costs, impositions and expenses related to the Premises as provided in Section 4 hereof, plus all other charges related to the Premises otherwise payable by Subtenant to Sublandlord hereunder, including, without limitation, all late charges and default interest attributable to late payments and/or defaults of Subtenant hereunder and all utility charges (together, the "Additional Charges"). Together, Base Rent and Additional Charges shall hereinafter be referred to as the "Rent".

4.3. **Late Charge.** If Subtenant fails to pay any Rent within ten(10) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by Sublandlord and Subtenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that Sublandlord will incur as a result of any such failure by Subtenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate Sublandlord for its damages resulting from such failure to pay and Subtenant shall promptly pay such charge to Sublandlord together with such unpaid amount.

4.4. **Default Interest.** If any Rent is not paid within ten (10) days following the due date, such unpaid amount shall bear interest from the due date until paid at the rate of the greater of the interest rate in effect which has been established by the Secretary of Treasury pursuant to Public Law, as described in Section 33 of the Master Lease. However, interest shall not be payable on late charges incurred by Subtenant nor on any amounts on which late charges are paid by Subtenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Subtenant.

## 5. TAXES, ASSESSMENTS AND OTHER EXPENSES

### 5.1. **Taxes and Assessments, Licenses, Permit Fees and Liens.**

(a) **Payment Responsibility.** Subtenant shall pay any and all real and personal property taxes, including, but not limited to, possessory interest taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Alterations, Subtenant's Personal Property, or Subtenant's use of the Premises or any Alterations during the Term. Subtenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which Sublandlord receives the tax bill directly from the taxing authority, Subtenant shall reimburse Sublandlord for payment of such sums immediately upon demand.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Subtenant recognizes and agrees that this Sublease may create a possessory interest subject to property taxation and that Subtenant may be subject to the payment of property taxes levied on such interest.

(c) **No Liens.** Subtenant shall not allow or suffer a lien for any taxes payable by Subtenant hereunder to be imposed upon the Premises or upon any equipment or other



property located thereon without discharging the same as soon as practicable, and in no event subsequent to delinquency.

(d) **Reporting Information.** Subtenant agrees to provide such information as Sublandlord may request to enable Sublandlord to comply with any possessory interest tax reporting requirements applicable to this Sublease.

5.2. **Other Expenses.** This is a "triple net" Sublease. Accordingly, Subtenant shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Alterations permitted thereon, including, without limitation, the cost of any utilities, maintenance or services necessary for Subtenant's use.

5.3. **Evidence of Payment.** Subtenant shall, upon Sublandlord's request, furnish to Sublandlord within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to Sublandlord, evidencing payment thereof.

## 6. **USE; COVENANTS TO PROTECT PREMISES**

6.1. **Subtenant's Permitted Use.** Subtenant may use the Premises as office spaces for the District Attorney's Office and for no other purpose.

6.2. **Subtenant's Access to the Premises.** As provided in Section 30 of the Master Lease, Subtenant will have access to the Premises on normal business hours, Monday through Friday from 8:00 AM to 7:00 PM, provided however, Subtenant shall coordinate such access with the local representative of Master Landlord.

6.3. **Rules and Regulations.** Subtenant agrees to adhere to all rules and regulations regarding the Premises attached hereto as Exhibit D, and any additional rules regarding security, ingress, egress, safety and sanitation applicable to the Premises or the Property, as such rules and regulations may be prescribed by Master Landlord or Sublandlord from time to time and which are provided to Subtenant in advance of the enforcement thereof.

6.4. **Easements.** This Sublease shall be subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Premises or any portion thereof, and to the right of Master Landlord to grant such additional easements and rights-of-way over, across, in and upon the Premises as Master Landlord shall determine to be in the public interest ("Additional Easements"), provided that, as provided in Section 29 of the Master Lease, Master Landlord shall use its best efforts to minimize any interference with Subtenant's operations hereunder caused by the granting of any such Additional Easements and the granting of such Additional Easements shall be conditioned on the assumption by the grantee thereof of liability to Subtenant for such damages as Subtenant shall suffer for property destroyed

or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such Additional Easements as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities. To the best knowledge of the Mayor's Treasure Island Project Office, there are no existing Additional Easements or other encumbrances which would materially interfere with Subtenant's use of the Premises.

**6.5. No Interference with Navy Operations.** Subtenant shall not conduct operations, nor make any Alterations (as defined below), that would interfere with or otherwise restrict Master Landlord's operations or environmental clean-up or restoration actions by the Master Landlord, Sublandlord, the Environmental Protection Agency, the State of California or their contractors. Environmental clean-up, restoration or testing activities by these Parties shall take priority over the Subtenant's use of the Premises in the event of any conflict, provided, however, in such event, Master Landlord and Sublandlord shall use their best efforts to minimize any disruption of Subtenant's operation.

**6.6. No Unlawful Uses, Nuisances or Waste.** Without limiting the foregoing, Subtenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Subtenant shall take all precautions to eliminate any nuisances or hazards relating to its activities on or about the Premises. Subtenant shall not conduct any business, place any sales display, or advertise in any manner in areas outside the Premises or on or about the Property or make or allow any of Subtenant's family, domestic partners or guests to make any loud or boisterous noise, or engage in any other objectionable behavior. Subtenant further agrees not to commit, suffer, or permit any waste or nuisance in, on or about the Premises.

## **7. ALTERATIONS**

**7.1. Alterations.** Subtenant shall not construct, install, make or permit to be made any alterations, installations or additions ("Alterations") in, to or about the Premises, without Sublandlord's prior written consent in each instance, which consent may given or withheld in Sublandlord's sole and absolute discretion. Subject to Sublandlord's consent as provided above, any permitted Alterations shall be done at Subtenant's sole expense (i) in strict accordance with plans and specifications approved in advance by Sublandlord in writing, (ii) by duly licensed and bonded contractors or mechanics approved by Sublandlord, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that Sublandlord may reasonably impose. In no event shall the construction, installation or the

making of any Alterations impair the use or operation of the Property, or any portion thereof, or Sublandlord's or Master Landlord's access thereto. Prior to the commencement of any work on the Premises to construct any permitted Alterations, Subtenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to Sublandlord. No material change from the plans and specifications approved by Sublandlord may be made without Sublandlord's prior consent. Sublandlord and Sublandlord's Agents shall have the right to inspect the course of such construction at all times. WITHOUT LIMITING THE FOREGOING, SUBTENANT ACKNOWLEDGES AND AGREES THAT AS A RESULT OF ASBESTOS AND LEAD BASED PAINT HAZARDS, PAINTING, SCRAPING OR SANDING OF ANY PORTION OF THE PREMISES IS STRICTLY PROHIBITED.

**7.2. Ownership of Alterations.** Any Alterations constructed on or affixed to the Premises by or on behalf of Subtenant pursuant to the terms and limitations of Section 7.1 above shall be and remain Subtenant's property during the Term. Upon the termination of this Sublease, Subtenant shall remove all such Alterations from the Premises in accordance with the provisions of Section 18 hereof, unless Sublandlord, at its sole option and without limiting any of the provisions of Section 7.1 above, requires as a condition to approval of any such Alterations that such Alterations remain on the Premises following the expiration or termination of this Sublease or unless Sublandlord as a condition of such approval reserves the right to elect by notice to Subtenant not less than fifteen (15) days prior to the end of the Term to have such Alterations remain on the Premises.

**7.3. Subtenant's Personal Property.** All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by Subtenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Subtenant's Personal Property") shall be and remain the property of Subtenant and may be removed by it subject to the provisions of Section 18 hereof.

**7.4. Sublandlord's Alterations of the Building and Building Systems.** Sublandlord reserves the right at any time to make alterations, additions, repairs, deletions or improvements to the common areas or any other part of the Building or the Building Systems, provided that any such alterations or additions shall not materially adversely affect the functional utilization of the Premises for purposes stated herein.

## **8. REPAIRS AND MAINTENANCE**

**8.1. Subtenant Responsible for Maintenance and Repair.** Subtenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises from and after the Commencement Date and shall keep the Premises in good condition and repair. Sublandlord shall not be responsible for the performance of any repairs, changes or alterations to the Premises, nor shall Sublandlord be liable for any portion of the cost

thereof. Subtenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, which may be necessary to maintain the Premises at all times in clean, safe, attractive and sanitary condition and in good order and repair, to Sublandlord's and Master Landlord's reasonable satisfaction, provided, however, that neither Subtenant nor Sublandlord shall be required to make structural repairs or Alterations to correct conditions affecting the Premises existing prior to the Commencement Date. If any portion of the Premises is damaged by any activities conducted by Subtenant or Subtenant's Agents or Subtenant's Invitees hereunder, Subtenant shall immediately, at its sole cost, repair all such damage and restore the Premises to its previous condition.

**8.2. Utilities.** Sublandlord shall provide the basic building utilities and services described in the attached Exhibit E. (the "Standard Utilities and Services") to the Premises, subject to the terms and conditions contained therein. Subtenant shall be responsible for furnishing, at its sole costs, any utilities or services other than or in excess of the Standard Utilities and Services that Subtenant may need for its use of the Premises.

**8.3. Trash.** Tenant shall deposit all trash into designated containers in the Building in compliance with the Rules and Regulations attached hereto as Exhibit D. Subtenant shall abide by all rules established by Sublandlord or Master Landlord for the handling of trash.

**8.4. No Right to Repair and Deduct.** Subtenant expressly waives the benefit of any existing or future Laws or judicial or administrative decision that would otherwise permit Subtenant to make repairs or replacements at Sublandlord's expense, or to terminate this Sublease because of Sublandlord's failure to keep the Premises or any part thereof in good order, condition or repair, or to abate or reduce any of Subtenant's obligations hereunder on account of the Premises or any part thereof being in need of repair or replacement. Without limiting the foregoing, Subtenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Subtenant to terminate this Sublease and with respect to any obligations of Sublandlord hereunder or any right of Subtenant to make repairs or replacements and deduct the cost thereof from Rent.

## **9. LIENS**

Subtenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Subtenant. In the event Subtenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Sublandlord shall have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by Sublandlord and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Sublandlord by Subtenant upon demand. Sublandlord shall have the right at all times

to post and keep posted on the Premises any notices permitted or required by law or that Sublandlord deems proper for its protection and protection of the Premises from mechanics' and materialmen's liens. Subtenant shall give Sublandlord at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises.

## **10. COMPLIANCE WITH LAWS**

**10.1. Compliance with Laws.** Subtenant shall promptly, at its sole expense, maintain the Premises and Subtenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary, provided however, that Subtenant shall not be required to make repairs or structural changes to the Premises required solely to correct conditions affecting the Premises existing prior to the Commencement Date or not related to Subtenant's use of the Premises, unless the requirement for such changes is imposed as a result of any Alterations or use of the Premises made or requested to be made by Subtenant. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 *et seq.* and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Sublease below). No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall give Subtenant any right to seek redress against Sublandlord for failing to comply with any Laws. Subtenant waives any rights now or hereafter conferred upon it by any existing or future Law to compel Sublandlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

### **10.2. Regulatory Approvals.**

(a) **Responsible Party.** Subtenant understands and agrees that Subtenant's use of the Premises and construction of Alterations permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Subtenant shall be solely responsible for obtaining any and all such regulatory approvals, including without limitation any liquor permits or approvals. Subtenant shall not seek any regulatory approval without first obtaining the written consent of Sublandlord. Subtenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Subtenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Subtenant, and Sublandlord shall have no liability, monetary or otherwise, for any such fines or penalties. Subtenant shall indemnify, protect, defend and hold harmless forever ("Indemnify") the Sublandlord and City, but not limited to, all of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees, contractors, boards, commissions, departments, agencies and other subdivisions and each of the persons acting by, through or under each of them, and their

respective heirs, legal representatives, successors and assigns, and each of them (the "Indemnified Parties") against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses") arising in connection with Subtenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

**10.3. Compliance with Sublandlord's Risk Management Requirements.** Subtenant shall not do anything, or permit anything to be done, in or about the Premises or any Alterations permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect Sublandlord from any potential premises liability. Subtenant shall faithfully observe, at its expense, any and all reasonable requirements of Sublandlord's Risk Manager with respect thereto and with the requirements of any policies of commercial general, all risk property or other policies of insurance at any time in force with respect to the Premises and any Alterations as required hereunder.

## **11. ENCUMBRANCES**

**11.1. Encumbrance By Subtenant.** Notwithstanding anything to the contrary contained in this Sublease, Subtenant shall not under any circumstances whatsoever create any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance or assignment or pledge of an asset as security in any manner against the Premises or Sublandlord's or Subtenant's interest under this Sublease.

## **12. DAMAGE OR DESTRUCTION**

**12.1. Damage or Destruction to the Premises.** In the case of damage to or destruction of the Premises by earthquake, fire or any other casualty, not caused by Subtenant or Subtenant's Agents or Subtenant's Invitees, whether insured or uninsured, which prevents Subtenant from operating the Premises for the purposes stated herein and the cost of repairing such damage exceeds Ten Thousand Dollars (\$10,000), either Party may terminate this Sublease upon thirty (30) days prior written notice and upon any such termination Subtenant shall surrender the Premises in accordance with Section 18 (except for damage caused by the casualty pursuant to which the Sublease may be terminated under this Section 12.1) and both Parties shall be relieved of any liability for such termination or for repairing such damage. If neither Party terminates this Sublease as provided in this Section 12.1, Subtenant shall, at its sole cost, promptly restore, repair, replace or rebuild the Premises to the condition the Premises were in prior to such damage or destruction, subject to any changes made in strict accordance with the requirements of Section 7.1 above. Under no circumstances shall Sublandlord have any obligation to repair, replace or rebuild the Premises in the event of such a casualty.

**12.2. No Abatement in Rent.** In the event of any damage or destruction to the



Premises, and if neither party terminates this Sublease as provided in Section 12.1 above, there shall be no abatement in the Rent payable hereunder.

**12.3. Waiver.** The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Alterations, and Sublandlord and Subtenant each hereby waives and releases any right to terminate this Sublease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

### **13. ASSIGNMENT AND SUBLETTING**

**13.1. Restriction on Assignment and Subletting.** Subtenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Subtenant), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Alterations or its interest in this Sublease, or permit any portion of the Premises to be occupied by anyone other than itself, or sublet any portion of the Premises, without Sublandlord's prior written consent in each instance, which Sublandlord may grant or withhold in its sole and absolute discretion.

### **14. DEFAULT; REMEDIES**

**14.1. Events of Default.** Any of the following shall constitute an event of default ("Event of Default") by Subtenant hereunder:

(a) **Rent.** Any failure to pay Rent or other sums, including sums due for utilities, within five (5) days after such sums are due;

(b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Sublease, provided Subtenant shall have a period of ten (10) days from the date of written notice from Sublandlord of such failure within which to cure such default under this Sublease, or, if such default is not capable of cure within such 10-day period, Subtenant shall have a reasonable period to complete such cure if Subtenant promptly undertakes action to cure such default within such 10-day period and thereafter diligently prosecutes the same to completion and uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from Sublandlord.

(c) **Vacation or Abandonment.** Any abandonment of the Premises for more than fourteen (14) consecutive days; and

(d) **Bankruptcy.** The appointment of a receiver to take possession of all or

substantially all of the assets of Subtenant, or an assignment by Subtenant for the benefit of creditors, or any action taken or suffered by Subtenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted.

**14.2. Remedies.** Upon the occurrence of an Event of Default by Subtenant, Sublandlord shall have the following rights and remedies in addition to all other rights and remedies available to Sublandlord at Law or in equity:

(a) **Terminate Sublease and Recover Damages.** The rights and remedies provided by law California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Subtenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Subtenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. Sublandlord's efforts to mitigate the damages caused by Subtenant's breach of this Sublease shall not waive Sublandlord's rights to recover unmitigated damages upon termination.

(b) **Appointment of Receiver.** The right to have a receiver appointed for Subtenant upon application by Sublandlord to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Sublandlord pursuant to this Sublease.

**14.3. Sublandlord's Right to Cure Subtenant's Defaults.** If Subtenant defaults in the performance of any of its obligations under this Sublease, then Sublandlord may at any time thereafter with three (3) days prior written notice (except in the event of an emergency as determined by Sublandlord), remedy such Event of Default for Subtenant's account and at Subtenant's expense. Subtenant shall pay to Sublandlord, as Additional Charges, promptly upon demand, all sums expended by Sublandlord, or other costs, damages, expenses or liabilities incurred by Sublandlord, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Subtenant's obligations under this Section shall survive the termination of this Sublease. Nothing herein shall imply any duty of Sublandlord to do any act that Subtenant is obligated to perform under any provision of this Sublease, and Sublandlord's cure or attempted cure of Subtenant's Event of Default shall not constitute a waiver of Subtenant's Event of Default or any rights or remedies of Sublandlord on account of such Event of Default.

## **15. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION**

**15.1. Release and Waiver of Claims.** Subtenant, on behalf of itself and Subtenant's Agents, covenants and agrees that the Indemnified Parties shall not be responsible for or liable to



Subtenant for, and, to the fullest extent allowed by any Laws, Subtenant hereby waives all rights against the Indemnified Parties and releases them from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from any cause whatsoever, including without limitation, partial or complete collapse of the Building due to an earthquake or subsidence, except only to the extent such Losses are caused exclusively by the gross negligence or willful misconduct of the Indemnified Parties (except as provided in Section 15.1(e) below). Without limiting the generality of the foregoing:

(a) Subtenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of the Indemnified Parties for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to Subtenant's uses hereunder. Sublandlord would not be willing to enter into this Sublease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of the Indemnified Parties, and Subtenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages and covenants not to sue the Indemnified Parties for such damages arising out of this Sublease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Subtenant pursuant to this Sublease regardless of the cause.

(b) Without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue the Indemnified Parties under any present or future Laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that Sublandlord terminates this Sublease because of such claim for inverse condemnation or eminent domain.

(c) As part of Subtenant's agreement to accept the Premises in its "As Is" condition as provided herein, and without limiting such agreement and any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Premises and any related improvements or any Laws or regulations applicable thereto or the suitability of the Premises for Subtenant's intended use.

(d) Subtenant acknowledges that it will not be a displaced person at the time

this Sublease is terminated, and Subtenant fully RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses and any and all claims, demands or rights against any of the Indemnified Parties under any present and future Laws, including, without limitation, any and all claims for relocation benefits or assistance from the Indemnified Parties under federal and state relocation assistance laws.

(e) Without limiting any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the Indemnified Parties decision to Sublease the Premises to the Subtenant, regardless of whether or not such decision is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties.

(f) Subtenant covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Indemnified Parties any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 15.1.

(g) In executing these waivers and releases, Subtenant has not relied upon any representation or statement other than as expressly set forth herein.

(h) Subtenant had made such investigation of the facts pertaining to these waivers and releases it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Subtenant regardless of any claims of mistake.

(i) In connection with the foregoing releases, Subtenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

Subtenant acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Subtenant realizes and acknowledges that it has agreed upon this Sublease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Sublease.

**15.2. Subtenant's Indemnity.** Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties from and against any and all Losses, expressly including but not limited to, any Losses arising out of a partial or complete collapse of the Building due to an earthquake or subsidence, incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any damage to or destruction of any property owned by or in the custody of Subtenant or Subtenant's Agents or Subtenant's Invitees, (b) any accident, injury to or death of a person, including, without limitation, Subtenant's Agents and Subtenant's Invitees, howsoever or by whomsoever caused, occurring in, on or about the Premises (c) any default by Subtenant in the observation or performance of any of the terms, covenants or conditions of this Sublease to be observed or performed on Subtenant's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Subtenant, Subtenant's Agents or Subtenant's Invitees or any person or entity claiming through or under any of them, of the Premises or any Alterations; (e) the condition of the Premises, including the Building, (f) any construction or other work undertaken by Subtenant on or about the Premises whether before or during the Term of this Sublease; or (g) any acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees, or of any trespassers, in, on or about the Premises or any Alterations; except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in effect on or validly retroactive to the date of this Sublease and further except only to the extent such Losses are caused by the gross negligence and intentional wrongful acts and omissions of the Indemnified Parties. Notwithstanding the foregoing, Subtenant's obligations to indemnify the Indemnified Parties under this Section 15.2 shall remain in full force and effect regardless of whether or not the Indemnified Parties' decision to Sublease the Premises to the Subtenant, given the seismic condition of the property, is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Sublandlord's costs of investigating any Loss. Subtenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter. Subtenant's obligations under this Section shall survive the expiration or sooner termination of this Sublease. Notwithstanding anything contained herein, to the extent such Losses are not covered by insurance required herein and subject to Section 12.1 above, Subtenant shall have no obligation to repair, restore or reconstruct the Premises (or to pay for the same) in the event the Premises are damaged or destroyed by an earthquake or subsidence or by any other uninsured casualty.

## **16. INSURANCE**

**16.1. Subtenant's Insurance.** Within five (5) of the Effective Date, Subtenant shall procure and maintain throughout the Term of this Sublease and pay the cost thereof the following

insurance:

(a) **Property Insurance.** Subtenant shall procure and maintain, at its own cost, a standard fire and extended coverage insurance policy insuring the Premises, including, without limitation, the Building and all fixtures, Alterations, furniture and equipment located thereon, in an amount not less than the full replacement value.

(b) **Public Liability and Other Insurance.** Subtenant shall at all times, at its cost, also maintain insurance for the mutual benefit of Sublandlord and Subtenant against:

(i) Claims for personal injury under a policy of commercial general liability insurance, including without limitation, liquor liability insurance, claims for bodily injury, property damage or employer's liability occurring in or upon the Premises arising from earthquakes or subsidence, in an amount not less than \$1,000,000 combined single limit. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CG-00-01-11-88.

(ii) Worker's compensation insurance with employer's liability insurance covering all persons employed and with respect to whom death or bodily injury claims could be asserted against Sublandlord, Subtenant, the Premises or any other Sublandlord property, in an amount not less than \$1,000,000 each accident.

(iii) Automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Subtenant uses automobiles in connection with its use of the Premises. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CA-00-01-06-92.

**16.2. General Requirements.** All insurance provided for under this Sublease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by Sublandlord.

(a) Should any of the required insurance be provided under a claims-made form, Subtenant shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of three (3) years beyond the expiration or termination of this Sublease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Sublease, such claims shall be covered by such claims-made policies.

(b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit

shall double the occurrence or claims limits specified above.

(c) All liability insurance policies shall be endorsed to provide the following:

(i) Cover Subtenant as the insured and the Sublandlord and the Master Landlord as additional insureds.

(ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Sublease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(iii) All policies shall be endorsed to provide thirty (30) days' advance written notice to Sublandlord of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for Sublandlord set forth in the Basic Sublease Information.

**16.3. Proof of Insurance.** Subtenant shall deliver to Sublandlord certificates of insurance in form and with insurers satisfactory to Sublandlord, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon Sublandlord's request, and Subtenant shall provide Sublandlord with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. As to the insurance required pursuant to Section 16.1(b)(1) above, such certificate shall state, among other things, that such insurance coverage includes and shall cover Subtenant's indemnity obligations under Section 15.2 above. In the event Subtenant shall fail to procure such insurance, or to deliver such policies or certificates, Sublandlord may, at its option, procure the same for the account of Subtenant, and the cost thereof shall be paid to Sublandlord within five (5) days after delivery to Subtenant of bills therefor.

**16.4. No Limitation on Indemnities.** Subtenant's compliance with the provisions of this Section shall in no way relieve or decrease Subtenant's indemnification obligations herein or any of Subtenant's other obligations or liabilities under this Sublease.

**16.5. Lapse of Insurance.** Notwithstanding anything to the contrary in this Sublease, Sublandlord may elect in Sublandlord's sole and absolute discretion to terminate this Sublease upon the lapse of any required insurance coverage by written notice to Subtenant.

**16.6. Subtenant's Personal Property.** Subtenant shall be responsible, at its expense, for separately insuring Subtenant's Personal Property.

**16.7. Waiver of Subrogation.** Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, Sublandlord and Subtenant each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises, or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises carried by Subtenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Subtenant shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against Sublandlord or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

## **17. ACCESS BY SUBLANDLORD**

### **17.1. Access to Premises by Sublandlord.**

(a) **General Access.** Sublandlord reserves for itself and Sublandlord's Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than twenty-four (24) hours oral or written notice to Subtenant (except in the event of an emergency) for any purpose.

(b) **Emergency Access.** In the event of any emergency, as determined by Sublandlord, Sublandlord may, at its sole option and without notice, enter the Premises and alter or remove any Alterations or Subtenant's Personal Property on or about the Premises. Sublandlord shall have the right to use any and all means Sublandlord considers appropriate to gain access to any portion of the Premises in an emergency. In such case, Sublandlord shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Subtenant from the Premises or any portion thereof.

(c) **No Liability.** Sublandlord shall not be liable in any manner, and Subtenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Sublandlord's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of Sublandlord or Sublandlord's Agents and not contributed to by the acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees.

**17.2. Access to Premises by Master Landlord.** Subtenant acknowledges and agrees that Master Landlord shall have all of the rights of access to the Premises described in the Master Lease.



## 18. SURRENDER

**18.1. Surrender of the Premises.** Upon the termination of this Sublease, Subtenant shall surrender to Sublandlord the Premises in the same condition as of the Commencement Date, ordinary wear and tear excepted, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Subtenant. On or before any termination hereof, Subtenant shall, at its sole cost, remove any and all of Subtenant's Personal Property from the Premises and demolish and remove any and all Alterations from the Premises (except for any Alterations that Sublandlord agrees are to remain part of the Premises pursuant to the provisions of Section 7.3 above). In addition, Subtenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Alterations. In connection therewith, Subtenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Subtenant's obligations under this Section shall survive the termination of this Sublease. Any items of Subtenant's Personal Property remaining on or about the Premises after the termination of this Sublease may, at Sublandlord's option and after thirty (30) days written notice to Subtenant, be deemed abandoned and in such case Sublandlord may dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law.

If Subtenant fails to surrender the Premises to Sublandlord upon the termination of this Sublease as required by this Section, Subtenant shall Indemnify Sublandlord against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Subtenant resulting from Subtenant's failure to surrender the Premises.

## 19. HAZARDOUS MATERIALS

**19.1. No Hazardous Materials.** Subtenant covenants and agrees that neither Subtenant nor any of Subtenant's Agents or Subtenant's Invitees shall cause or permit any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, including, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural

gas liquids ("Hazardous Material") to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises without the prior written approval of Sublandlord, which approval may be withheld in Sublandlord's sole and absolute discretion. Subtenant shall immediately notify Sublandlord if and when Subtenant learns or has reason to believe there has been any release of Hazardous Material in, on or about the Premises. Sublandlord may from time to time request Subtenant to provide adequate information for Sublandlord to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises and any other property, including, without limitation, soil, air and groundwater conditions ("Environmental Laws"), and Subtenant shall promptly provide all such information. Sublandlord and Sublandlord's Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Subtenant (except in the event of an emergency). Without limiting the foregoing, Subtenant acknowledges and agrees that it shall be bound by and will comply with the environmental protection provisions provided for in Section 13 of the Master Lease.

**19.2. Subtenant's Environmental Indemnity.** If Subtenant breaches any of its obligations contained in Section 19.1 above, or, if any act or omission or negligence of Subtenant or any of Subtenant's Agents or Subtenant's Invitees results in any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leeching or dumping ("Release") of Hazardous Material in, on, under or about the Premises or the Property, without limiting Subtenant's general Indemnity contained in Section 15.2 above, Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties, and each of them, from and against all any and all enforcement, investigation, remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws together with any and all Losses made or threatened by any third party against Sublandlord, Sublandlord's Agents, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, Release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law, investigation and remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, the loss or restriction of the use or any amenity of the Premises and attorneys' fees and consultants' fees and experts' fees and costs ("Hazardous Materials Claims") arising during or after the Term of this Sublease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Premises or the Property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other Sublandlord property. Without limiting the foregoing, if Subtenant or any of Subtenant's Agents or Subtenant's Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or the Property,



Subtenant shall, immediately, at no expense to Sublandlord, take any and all appropriate actions to return the Premises or other Sublandlord property affected thereby to the condition existing prior to such Release and otherwise investigate and remediate the Release in accordance with all Environmental Laws. Subtenant shall provide Sublandlord with written notice of and afford Sublandlord a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

**19.3. Acknowledgment of Receipt of EBS and FOSL Reports.** Subtenant hereby acknowledges for itself and Subtenant's Agents that, prior to the execution of this Sublease, it has received and reviewed the Environmental Baseline Survey ("EBS") and the Finding of Suitability to Lease ("FOSL") described in Section 7 of the Master Lease.

## **20. GENERAL PROVISIONS**

**20.1. Notices.** Except as otherwise expressly provided in this Sublease, any notice given hereunder shall be effective only in writing and given by delivering the notice in person, or by sending it first class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid as follows:

Notice Address of Sublandlord

Treasure Island Development Authority  
Treasure Island Project Office  
401 Palm Avenue  
Building 1, Room 237  
Treasure Island  
Attn: Executive Director  
Fax No.: 415-274-0299

with a copy to:

Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94103  
Attn: Donnell Choy  
Fax No.: (415) 554-4736

Notice Address of Subtenant:

San Francisco District Attorney's Office  
Hall of Justice  
850 Brayant St.  
San Francisco, CA 94103

Attn: Reginald Smith  
Phone No. (415) 553-1268  
Fax No.: (415) 575-8815

Notice Address of Master Landlord: Commanding Officer (Code 24)  
Engineering Field Activity West  
Naval Facilities Engineering Command  
900 Commodore Drive  
San Bruno, California 94066

Any Party hereunder may designate a new address for notice purposes hereunder at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made, if sent by commercial overnight carrier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section 20.1 and applicable Laws, shall be deemed receipt of such notice..

**20.2. Security Deposit.** Subtenant shall pay to Sublandlord upon execution of this Sublease a security deposit in the amount of Two Thousand Seven Hundred Dollars (\$2,700) for security for the faithful performance of all terms, covenants and conditions of this Sublease. Subtenant agrees that Sublandlord may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises caused by Subtenant, Subtenant's Agents or Subtenant's Invitees, or any failure of Subtenant to perform any other terms, covenants or conditions contained in this Sublease, without waiving any of Sublandlord's other rights and remedies hereunder or at Law or in equity. Should Sublandlord use any portion of the security deposit to cure any Event of Default by Subtenant hereunder, Subtenant shall immediately replenish the security deposit to the original amount, and Subtenant's failure to do so within five (5) days of Sublandlord's notice shall constitute a material Event of Default under this Sublease. Sublandlord's obligations with respect to the security deposit are solely that of debtor and not trustee. Sublandlord shall not be required to keep the security deposit separate from its general funds, and Subtenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Subtenant's liability for the performance of any of its obligations under this Sublease. To the extent that Sublandlord is not entitled to retain or apply the security deposit pursuant to this Section 20.3, Sublandlord shall return such security deposit to Sublandlord within forty-five (45) days of the termination of this Sublease.

**20.3. No Implied Waiver.** No failure by Sublandlord to insist upon the strict performance of any obligation of Subtenant under this Sublease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Rent during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any

Agent of Sublandlord, shall constitute a waiver of such breach or of Sublandlord's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Sublease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Sublandlord given in any instance under the terms of this Sublease shall not relieve Subtenant of any obligation to secure the consent of Sublandlord in any other or future instance under the terms of this Sublease.

**20.4. Amendments.** Neither this Sublease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

**20.5. Authority.** If Subtenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Sublease on behalf of Subtenant does hereby covenant and warrant that Subtenant is a duly authorized and existing entity, that Subtenant has and is qualified to do business in California, that Subtenant has full right and authority to enter into this Sublease, and that each and all of the persons signing on behalf of Subtenant are authorized to do so. Upon Sublandlord's request, Subtenant shall provide Sublandlord with evidence reasonably satisfactory to Sublandlord confirming the foregoing representations and warranties. Without limiting the generality of the foregoing, Subtenant represents and warrants that it has full power to make the waivers and releases, indemnities and the disclosure set forth herein, and that it has received independent legal advice from its attorney as to the advisability of entering into a sublease containing those provisions and their legal effect.

**20.6. Joint and Several Obligations.** The word "Subtenant" as used herein shall include the plural as well as the singular. If there is more than one Subtenant, the obligations and liabilities under this Sublease imposed on Subtenant shall be joint and several.

**20.7. Interpretation of Sublease.** The captions preceding the articles and sections of this Sublease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Sublease. This Sublease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Sublease. Provisions in this Sublease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or Sublandlord holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Sublease, whether or not

language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of Sublandlord is required to be obtained by Subtenant hereunder, Sublandlord may give or withhold such consent in its sole and absolute discretion.

**20.8. Successors and Assigns.** Subject to the provisions of Section 13, the terms, covenants and conditions contained in this Sublease shall bind and inure to the benefit of Sublandlord and Subtenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any transfer by Sublandlord (or by any subsequent Sublandlord) of its interest in the Premises as lessee, including any transfer by operation of Law, Sublandlord (or any subsequent Sublandlord) shall be relieved from all subsequent obligations and liabilities arising under this Sublease subsequent to such transfer.

**20.9. Brokers.** Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Sublease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall Indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Sublease.

**20.10. Severability.** If any provision of this Sublease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Sublease shall be valid and be enforceable to the fullest extent permitted by Law.

**20.11. Governing Law.** This Sublease shall be construed and enforced in accordance with the Laws of the State of California and the federal government.

**20.12. Entire Agreement.** This instrument (including the exhibits hereto, which are made a part of this Sublease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Sublease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Sublease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Sublease. Subtenant hereby acknowledges that neither Sublandlord nor Sublandlord's Agents have made any representations or warranties with respect to the Premises

or this Sublease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Subtenant by implication or otherwise unless expressly set forth herein. Notwithstanding the foregoing, the Parties shall make a good faith effort to negotiate mutually acceptable changes to this Sublease, if any, within ninety (90) days of the date hereof, provided however, that such changes, if any, shall be subject to the approval of the Master Landlord.

**20.13. Attorneys' Fees.** In the event that either Sublandlord or Subtenant fails to perform any of its obligations under this Sublease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Sublease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees.

**20.14. Time of Essence.** Time is of the essence with respect to all provisions of this Sublease in which a definite time for performance is specified.

**20.15. Cumulative Remedies.** All rights and remedies of either party hereto set forth in this Sublease shall be cumulative, except as may otherwise be provided herein.

**20.16. Survival of Indemnities.** Termination of this Sublease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Sublease, nor shall it affect any provision of this Sublease that expressly states it shall survive termination hereof. Subtenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Sublease, Subtenant has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter.

**20.17. Relationship of Parties.** Sublandlord is not, and none of the provisions in this Sublease shall be deemed to render Sublandlord, a partner in Subtenant's business, or joint venturer or member in any joint enterprise with Subtenant. This Sublease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Sublease by Sublandlord does not constitute authorization or approval by Sublandlord of any activity conducted by Subtenant on, in or relating to the Premises.

**20.18. Recording.** Subtenant agrees that it shall not record this Sublease nor any memorandum or short form hereof in the official records of any county.

**20.19. Non-Liability of Indemnified Parties' officials, employees and Agents.** No elective or appointive board, commission, member, officer or employee of any of the

Indemnified Parties shall be personally liable to Subtenant, its successors and assigns, in the event of any default or breach by Sublandlord or for any amount which may become due to Subtenant, its successors and assigns, or for any obligation of Sublandlord under this Agreement.

**20.20. No Discrimination.** Subtenant shall comply with the non-discrimination provisions of Section 19.1 of the Master Lease, including, without limitation, posting all notices required therein.

**20.21. Counterparts.** This Sublease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**20.22. Master Landlord's Consent.** This Sublease is expressly conditioned upon receipt of the written consent of Master Landlord

## **21. SPECIAL PROVISIONS**

**21.1. Signs.** Subtenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from public corridors or other portions of any common areas of the Building or from the exterior of the Premises, without Sublandlord's prior written consent, which Sublandlord may withhold or grant in its sole discretion.

**21.2. Public Transit Information.** Subtenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Subtenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Building and encouraging use of such facilities, all at Subtenant's sole expense.

### **21.3. Non-Discrimination.**

(a) **Covenant Not to Discriminate.** In the performance of this Sublease, Subtenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with, Subtenant in any of Subtenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Subtenant.



(b) Subleases and Other Subcontracts. Subtenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Subtenant shall incorporate in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Subtenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Sublease.

(c) Non-Discrimination in Benefits. Subtenant does not as of the date of this Sublease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) HRC Form. Subtenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC").

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Subtenant shall comply fully with and be bound by all of the provisions that apply to this Sublease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Subtenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Sublease may be assessed against Subtenant and/or deducted from any payments due Subtenant.

**21.4. No Relocation Assistance; Waiver of Claims.** Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated or expires by its own terms, and Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, Sublandlord, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from

Sublandlord under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Sublease with respect to a Taking.

**21.5. Rent Control Laws Inapplicable.** Subtenant acknowledges and agrees that the rent for the Premises is controlled by a governmental agency and, therefore, neither the Premises nor this Sublease are subject to the provisions of any rent control or other similar ordinances, including, without limitation, the provisions of Chapter 37 of the San Francisco Administrative Code.

**21.6. MacBride Principles - Northern Ireland.** The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Subtenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

**21.7. Tropical Hardwood Ban.** The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product.

**21.8. Conflicts of Interest.** Subtenant states that it is familiar with the provisions of Section 8.105 and 8.106 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Subtenant further certifies that it has made a complete disclosure to the Sublandlord of all facts bearing on any possible interests, direct or indirect, which Subtenant believes any officer or employee of the Sublandlord presently has or will have in this Sublease or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant to make such disclosure, if any, shall constitute grounds for the Sublandlord's termination and cancellation of this Sublease.

**21.9. Prevailing Wages for Construction Work.** Subtenant agrees that any person performing labor in the construction of the alterations required under Section 7.1 [Alterations] shall be paid not less than the highest prevailing rate of wages and that Subtenant shall include, in any contract for construction of such improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Subtenant further agrees that, as to the construction of such improvements under this Sublease, Subtenant shall comply with all the provisions of subsection (b) of San Francisco Charter Section A7.204 and Sections 6.33 through 6.45 of the San Francisco Administrative Code that relate to payment of prevailing wages. Subtenant shall require any contractor to provide, and shall deliver to Sublandlord every two weeks during any construction



period, certified payroll reports with respect to all persons performing labor in the construction of any of the required alterations.

**21.10. Prohibition of Tobacco Advertising.** Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the Authority or the City, including the Premises and the Property. This prohibition includes the placement of the name of a company producing selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communication the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

Sublandlord and Subtenant have executed this Sublease in triplicate as of the date first written above.



**AGENDA ITEM**  
**Treasure Island Development Authority**  
**City and County of San Francisco**

**Subject:** Resolution Authorizing the Executive Director to Amend a License with the U.S. Navy and a Sublease with San Francisco Little League to Extend The Term for Use of the Little League Field.

**Agenda Item No. 10**  
**Meeting of February 14, 2001**

**Contact/Phone:** Annemarie Conroy, Executive Director  
Stephen Proud, Director of Development  
274-0660

**SUMMARY OF PROPOSED ACTION:**

Staff is requesting the Authority adopt a resolution which would allow the Executive Director to execute an extension of the license with the U.S. Navy for the little league field for one year and to amend the existing sublease with San Francisco Little League to extend the term for the same time period.

**BACKGROUND**

On December 8 1999, the Authority authorized the Executive Director to execute a lease with San Francisco Little League (SFL) for the use of the Little League field located on Treasure Island and on January 1, 2000, the two parties executed the sublease. Under the original provisions of the sublease, San Francisco Little League had use of the field for a term that commenced on January 1, 2000 and is scheduled to terminate on March 14, 2001.

San Francisco Little League has contacted Authority staff and expressed a desire to extend the term of the original sublease for one year, resulting in a new termination date of March 14, 2002. This extension would allow SFL the opportunity to continue to use the field as their "home field" for the upcoming seasons.

Under the terms of the original sublease, SFL is responsible for renovating the field to bring it to playable condition and to provide for the ongoing maintenance of the field. In exchange, SFL receives preferential scheduling of the facility and the Authority waives rental payments. In addition, SFL is required to make the field available for four priority user groups (identified by the Authority) when the field is not in use by SFL. The four priority users are the Treasure Island Homeless Development Initiative, the Delancey Street Life Learning Academy, the Treasure Island Elementary School, and John Stewart residents.

SFL is not required to pay rent to the Authority so long as the field is maintained in a playable condition and that SFL makes the field available to the users identified above. SFL is responsible for all costs associated with utility service and the Common Area Maintenance (CAM) charges levied by the Navy.

SFLL has met the obligation set forth in the original sublease and as a result, Staff is recommending the Authority grant the Executive Director the authorization to extend the term of the license with U.S. Navy and the sublease with SFLL for one year (both amendments are attached to this staff summary as Exhibit A). Any further extensions will require the approval of the Authority Board.

1 [Sublease of Baseball Field to San Francisco Little League]

2 APPROVING AND AUTHORIZING THE TREASURE ISLAND DEVELOPMENT AUTHORITY  
3 TO EXECUTE AN AMENDMENT TO THE MASTER LICENSE WITH THE U.S. NAVY AND  
4 AN AMANEDMENT TO THE SUBLEASE WITH THE SAN FRANCISCO LITTLE LEAGUE TO  
5 EXTEND THE TERM FOR USE OF THE LITTLE LEAGUE FIELD FOR ONE YEAR.

6 WHEREAS, On May 2, 1997, the Board of Supervisors (the "Board") passed  
7 Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a  
8 nonprofit public benefit corporation known as the Treasure Island Development Authority (the  
9 "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction,  
10 rehabilitation, reuse and conversion of former Naval Station Treasure Island (the "Base") for  
11 the public interest, convenience, welfare and common benefit of the inhabitants of the City  
12 and County of San Francisco; and,

13 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended  
14 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter  
15 1333 of the Statutes of 1968 (the "Act"), the California legislature (i) designated the Authority  
16 as a redevelopment agency under California redevelopment law with authority over the Base  
17 upon approval of the City's Board of Supervisors, and, (ii) with respect to those portions of the  
18 Base which are subject to the Tidelands Trust, vested in the Authority the authority to  
19 administer the public trust for commerce, navigation and fisheries as to such property; and,

20 WHEREAS, The Tidelands Trust prohibits the sale of trust property into private  
21 ownership, generally requires that Tidelands Trust property be accessible to the public and  
22 encourages public-oriented uses of trust property that, among other things, attract people to  
23 the waterfront, promote public recreation, protect habitat and preserve open space; and,  
24  
25

1 WHEREAS, In order to facilitate productive reuse and job creation on the Base, it may  
2 be beneficial for the Authority to lease or license property from the Navy and, in turn, sublease  
3 or sublicense such property to third-parties or use such property for municipal purposes; and,

4 WHEREAS, At its December 8, 1999 meeting, the Authority approved a resolution  
5 authorizing staff to execute a sublease ("Original Sublease") with the San Francisco Little  
6 League ("Subtenant") for the use of a baseball field on Treasure Island (the "Premises"); and,

7 WHEREAS< The Authority executed a License Agreement with the United States Navy  
8 for the Premises (the "Master License") that expires on March 14, 2001; and

9 WHEREAS, The term of the Original Sublease was from January 1, 2000 to March 14,  
10 2001; and,

11 WHEREAS, The Subtenant has requested an extension of the termination date for one  
12 (1) additional year to March 14, 2002; and,

13 WHEREAS, Subtenant has acted in good faith to meet the obligations set forth in the  
14 Original Sublease for renovations and access to the field for priority groups; Now, therefore,  
15 be it

16 RESOLVED, That the Authority hereby approves and authorizes the Executive Director  
17 to execute an amendment to the Master License with the United States Navy and an  
18 amendment to the Original Sublease with Subtenant to extend the term for one (1) additional  
19 year to March 14, 2002.  
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1  
2 CERTIFICATE OF SECRETARY  
3

4 *I hereby certify that I am the duly elected and acting Secretary of the Treasure Island*  
5 *Development Authority, a California nonprofit public benefit corporation, and that the above*  
6 *Resolution was duly adopted and approved by the Board of Directors of the Authority at a*  
7 *properly noticed meeting on February 14, 2001.*  
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10 John Elberling, Secretary  
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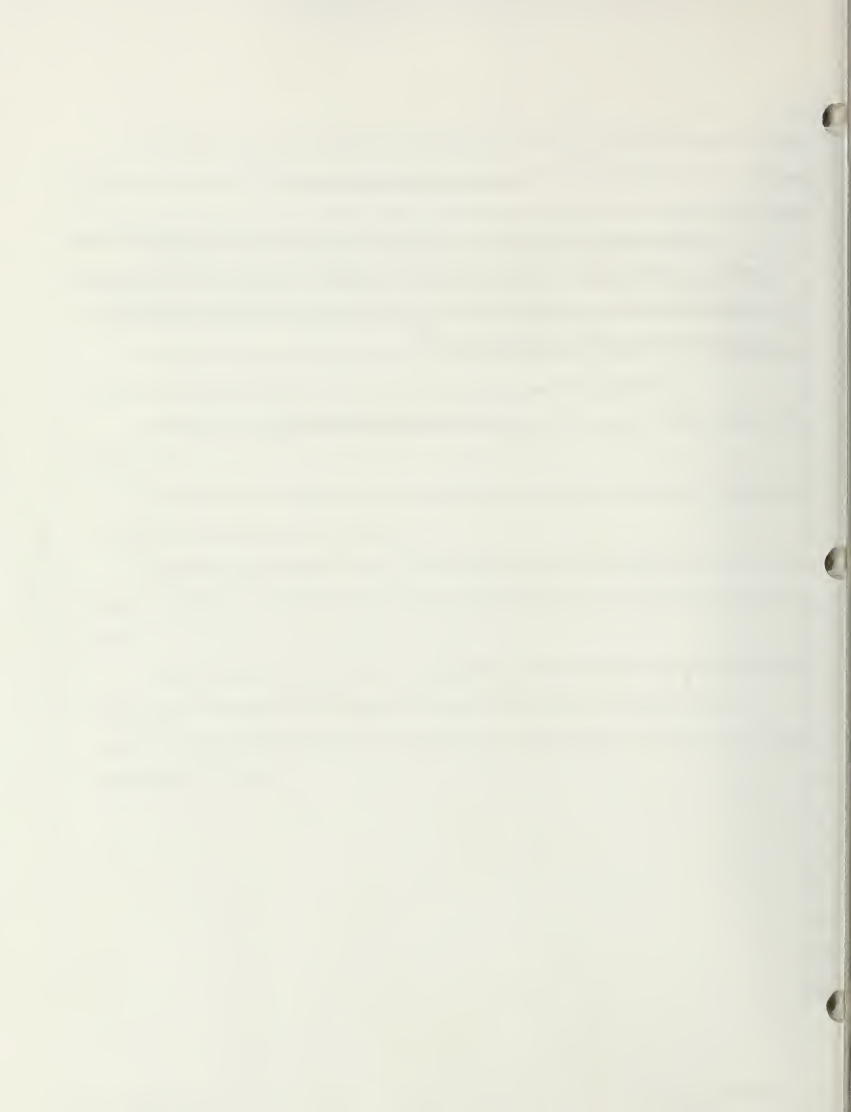








EXHIBIT A  
AMENDMENTS FOR NAVY LICENSE  
AND  
SAN FRANCISCO LITTLE LEAGUE SUBLEASE



## AMENDMENT OF SOLICITATION/MODIFICATION OF CONTRACT

1. CONTRACT ID CODE  
N6247400RP00B14PAGE OF PAGES  
1 | 1

2. AMENDMENT/MODIFICATION NO.

3. EFFECTIVE DATE

15 Mar 2001

4. REQUISITION/PURCHASE REQ. NO.

5. PROJECT NO. (if applicable)

One (1)

ISSUED BY

CODE

06CAAW

7. ADMINISTERED BY (if other than Item 6)

CODE

SOUTHWEST DIVISION  
NAVAL FACILITIES ENGINEERING COMMAND  
BRAC OPERATIONS DEPARTMENT  
1220 PACIFIC HIGHWAY  
SAN DIEGO, CA 92132-5167

8. NAME AND ADDRESS OF CONTRACTOR (No. street, county, State and ZIP Code)

TREASURE ISLAND DEVELOPMENT AUTHORITY  
410 PALM AVENUE, BLDG 1, ROOM 237  
TREASURE ISLAND  
SAN FRANCISCO, CA 012

9A. AMENDMENT OF SOLICITATION NO.

9B. DATED (SEE ITEM 11)

10A. MODIFICATION OF CONTRACT/ORDER NO.  
N6247400RP00B14

10B. DATED (SEE ITEM 13) 5 FEB 2001

CODE

FACILITY CODE

## 11. THIS ITEM ONLY APPLIES TO AMENDMENTS OF SOLICITATIONS

☐ The above numbered solicitation is amended as set forth in Item 14. The hour and date specified for receipt of Offers ☐ is extended, ☐ is not extended. Offers must acknowledge receipt of this amendment prior to the hour and date specified in the solicitation or as amended, by one of the following methods:

(a) By completing items 8 and 15, and returning \_\_\_\_\_ copies of the amendment; (b) By acknowledging receipt of this amendment on each copy of the offer submitted; or (c) By separate letter or telegram which includes a reference of to the solicitation and amendment numbers. FAILURE OF YOUR ACKNOWLEDGEMENT TO BE RECEIVED AT THE PLACE DESIGNATED FOR THE RECEIPT OF OFFERS PRIOR TO THE HOUR AND DATE SPECIFIED MAY RESULT IN REJECTION OF YOUR OFFER. If by virtue of this amendment you desire to change an offer already submitted, such change may be made by telegram or letter, provided each telegram or letter makes reference to the solicitation and this amendment, and is received prior to the opening hour and date specified.

12. ACCOUNTING AND APPROPRIATION DATA (if required)

13. THIS ITEM APPLIES ONLY TO MODIFICATIONS OF CONTRACTS/ORDERS.  
IT MODIFIED THE CONTRACT/ORDER NO. AS DESCRIBED IN ITEM 14.

A. THIS CHANGE ORDER IS ISSUED PURSUANT TO: (Specify authority) THE CHANGES SET FORTH IN ITEM 14 ARE MADE IN THE CONTRACT ORDER NO. IN ITEM 10A.

B. THE ABOVE NUMBERED CONTRACT/ORDERED IS MODIFIED TO REFLECT THE ADMINISTRATIVE CHANGES (such as changes in paying office appropriation date, etc.) SET FORTH IN ITEM 14, PURSUANT TO THE AUTHORITY OF FAR 43.103(b).

C. THIS SUPPLEMENTAL AGREEMENT IS ENTERED INTO PURSUANT TO AUTHORITY OF \_\_\_\_\_

XX D. OTHER (Specify type of modification and authority)  
MUTUAL AGREEMENT OF BOTH PARTIES

E. IMPORTANT: Contractor ☐ is not, ☒ is required to sign this document and return 2 copies to the issuing office.

14. DESCRIPTION OF AMENDMENT/MODIFICATION (Organized by UCF section headings, including solicitation/contract subject matter where feasible)

1. DELETE Item 2, "Dates Covered" in its entirety and hereby replace it with:

"FROM: 15 MARCH 2000 TO: 14 MARCH 2002"

Except as provided herein, all terms and conditions of the document referenced in Item 9A or 10A, as hereinafter changed, remains unchanged and in full force and effect.

15A. NAME AND TITLE OF SIGNER (Type or print)

16A. NAME AND TITLE OF CONTRACTING OFFICER (Type or print)

WILLIAM R. CARSILO  
REAL ESTATE CONTRACTING OFFICER

15B. CONTRACTOR/OFFEROR

15C. DATE SIGNED

16B. UNITED STATES OF AMERICA

16C. DATE SIGNED

BY

(Signature of Person Authorized to Sign)

BY

(Signature of Contracting Officer)

STANDARD FORM 30 (REV. 10-83)



**FIRST AMENDMENT TO SUBLEASE**  
**between**  
**THE TREASURE ISLAND DEVELOPMENT AUTHORITY**  
**as Sublandlord**

**and**

**THE SAN FRANCISCO LITTLE LEAGUE**  
**a non-profit public benefit corporation**  
**as Subtenant**

**For the Sublease of**  
**The Little League Field**  
**at Former Naval Station Treasure Island**  
**San Francisco, California**





## FIRST AMENDMENT TO TREASURE ISLAND SUBLEASE

THIS FIRST AMENDMENT TO SUBLEASE (the "Fourth Amendment"), dated as of this 15th day of March 2001, is by and between the Treasure Island Development Authority ("Sublandlord") and the San Francisco Little League ("Subtenant")

This Sublease is made with reference to the following facts and circumstances:

A. Subtenant and Sublandlord entered into that certain sublease, dated January 1, 2000, for the use of the Little League Field located on Treasure Island Island, as more particularly shown on the map attached to the Original Sublease as Exhibit B (the "Original Premises").

B. Subtenant and Sublandlord desire to amend the Original Sublease to extend the term (the "Original Term").

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

1. Defined Terms. Capitalized terms not separately defined herein shall have the same meaning provided in the Original Sublease.

2. Term of Sublease. The Original Term described in Section 3.1 of the Original Sublease is hereby amended to terminate on March 14 2002.

3. Terms and Conditions of Original Sublease Remain in Force and Effect. Except as specifically amended hereby, the terms and conditions of the Original Sublease, as amended by this Amendment, shall remain in full force and effect.

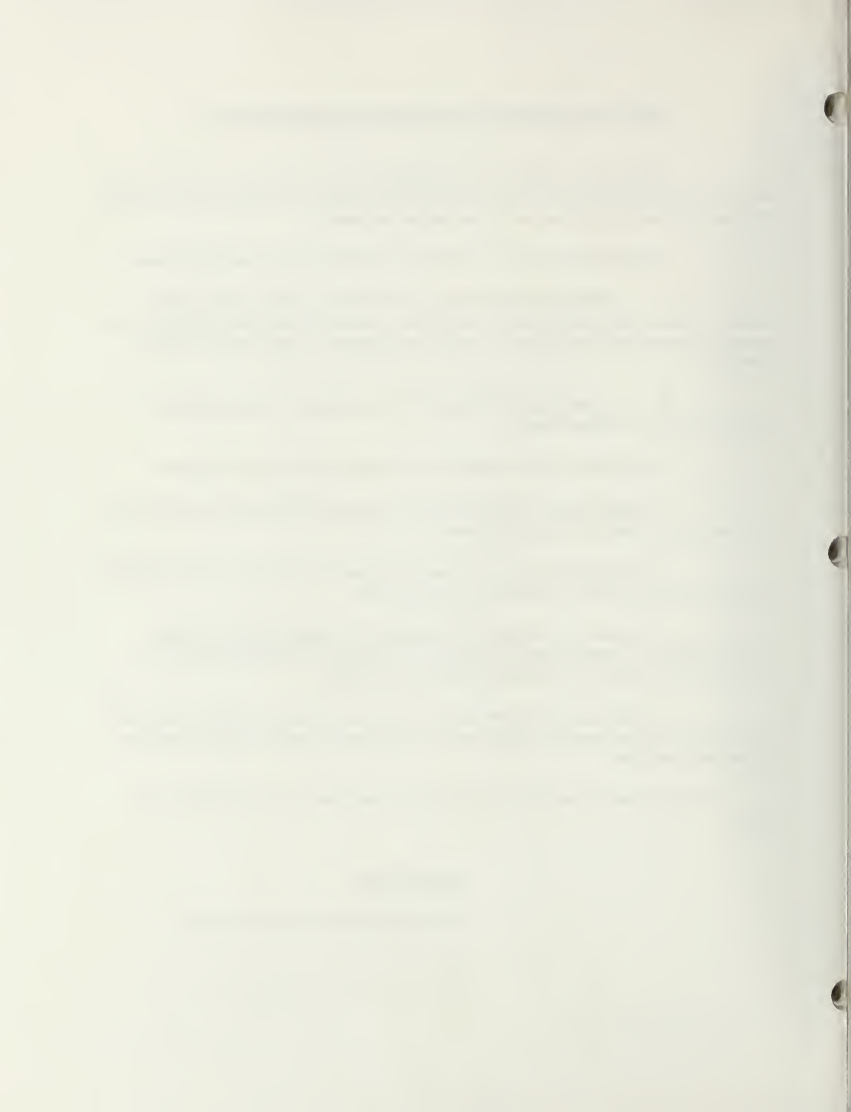
4. Counterparts. This Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Sublandlord and Subtenant have executed this Amendment as of the date first written above.

SUBTENANT:

SAN FRANCISCO LITTLE LEAGUE

By: \_\_\_\_\_  
Its: \_\_\_\_\_



SUBLANDLORD:

THE TREASURE ISLAND DEVELOPMENT AUTHORITY

By: \_\_\_\_\_

Annemarie Conroy

Its: Executive Director

Approved as to Form:

\_\_\_\_\_  
Deputy City Attorney



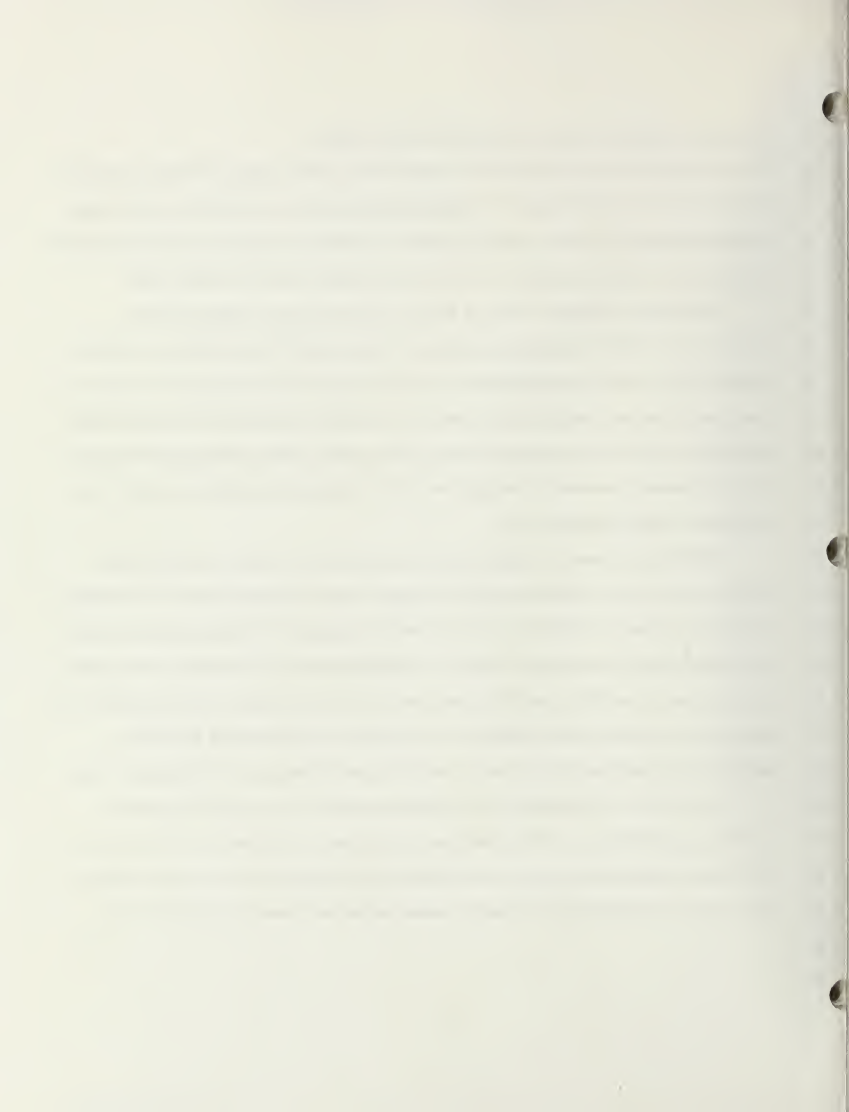
1 [Sublease of Baseball Field to San Francisco Little League]

2 APPROVING AND AUTHORIZING THE TREASURE ISLAND DEVELOPMENT AUTHORITY  
3 TO EXECUTE AN AMENDMENT TO THE MASTER LICENSE WITH THE U.S. NAVY AND  
4 AN AMANEDMENT TO THE SUBLEASE WITH THE SAN FRANCISCO LITTLE LEAGUE TO  
5 EXTEND THE TERM FOR USE OF THE LITTLE LEAGUE FIELD FOR ONE YEAR.

6 WHEREAS, On May 2, 1997, the Board of Supervisors (the "Board") passed  
7 Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a  
8 nonprofit public benefit corporation known as the Treasure Island Development Authority (the  
9 "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction,  
10 rehabilitation, reuse and conversion of former Naval Station Treasure Island (the "Base") for  
11 the public interest, convenience, welfare and common benefit of the inhabitants of the City  
12 and County of San Francisco; and,

13 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended  
14 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter  
15 1333 of the Statutes of 1968 (the "Act"), the California legislature (i) designated the Authority  
16 as a redevelopment agency under California redevelopment law with authority over the Base  
17 upon approval of the City's Board of Supervisors, and, (ii) with respect to those portions of the  
18 Base which are subject to the Tidelands Trust, vested in the Authority the authority to  
19 administer the public trust for commerce, navigation and fisheries as to such property; and,

20 WHEREAS, The Tidelands Trust prohibits the sale of trust property into private  
21 ownership, generally requires that Tidelands Trust property be accessible to the public and  
22 encourages public-oriented uses of trust property that, among other things, attract people to  
23 the waterfront, promote public recreation, protect habitat and preserve open space; and,  
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1 WHEREAS, In order to facilitate productive reuse and job creation on the Base, it may  
2 be beneficial for the Authority to lease or license property from the Navy and, in turn, sublease  
3 or sublicense such property to third-parties or use such property for municipal purposes; and,

4 WHEREAS, At its December 8, 1999 meeting, the Authority approved a resolution  
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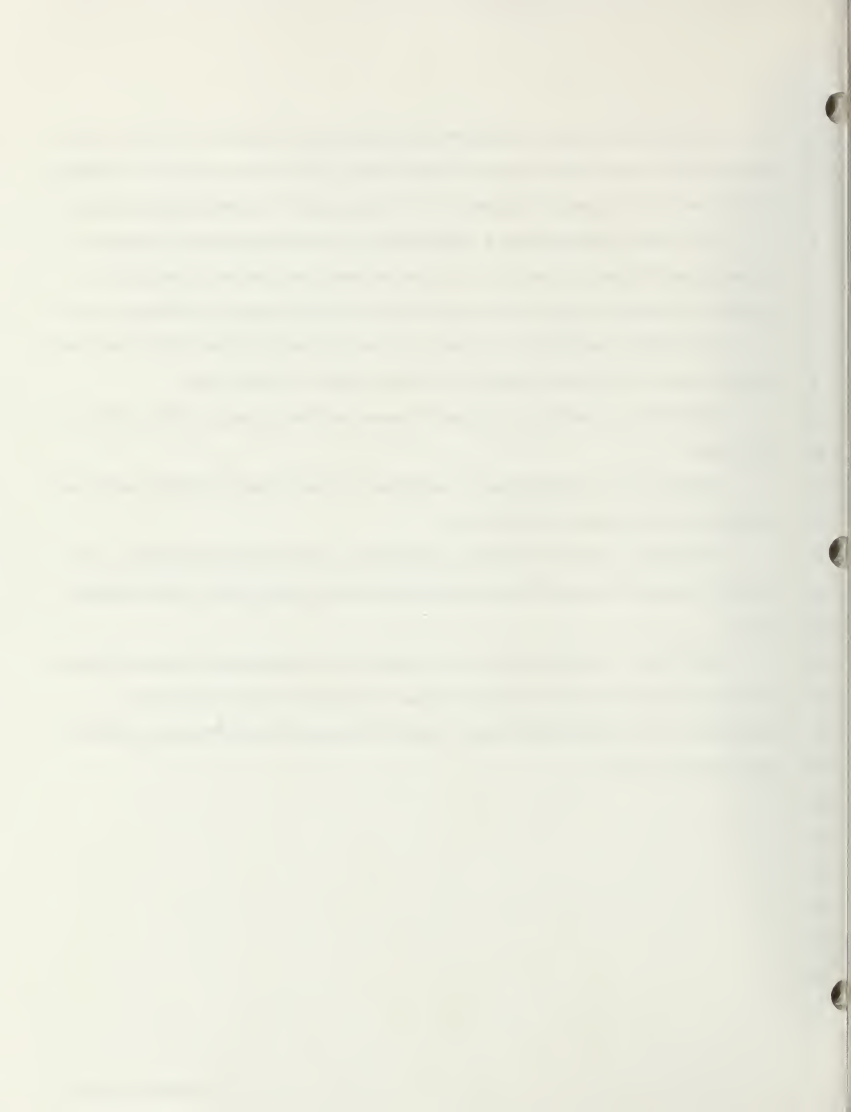
7 WHEREAS< The Authority executed a License Agreement with the United States Navy  
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9 WHEREAS, The term of the Original Sublease was from January 1, 2000 to March 14,  
10 2001; and,

11 WHEREAS, The Subtenant has requested an extension of the termination date for one  
12 (1) additional year to March 14, 2002; and,

13 WHEREAS, Subtenant has acted in good faith to meet the obligations set forth in the  
14 Original Sublease for renovations and access to the field for priority groups; Now, therefore,  
15 be it

16 RESOLVED, That the Authority hereby approves and authorizes the Executive Director  
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18 amendment to the Original Sublease with Subtenant to extend the term for one (1) additional  
19 year to March 14, 2002.

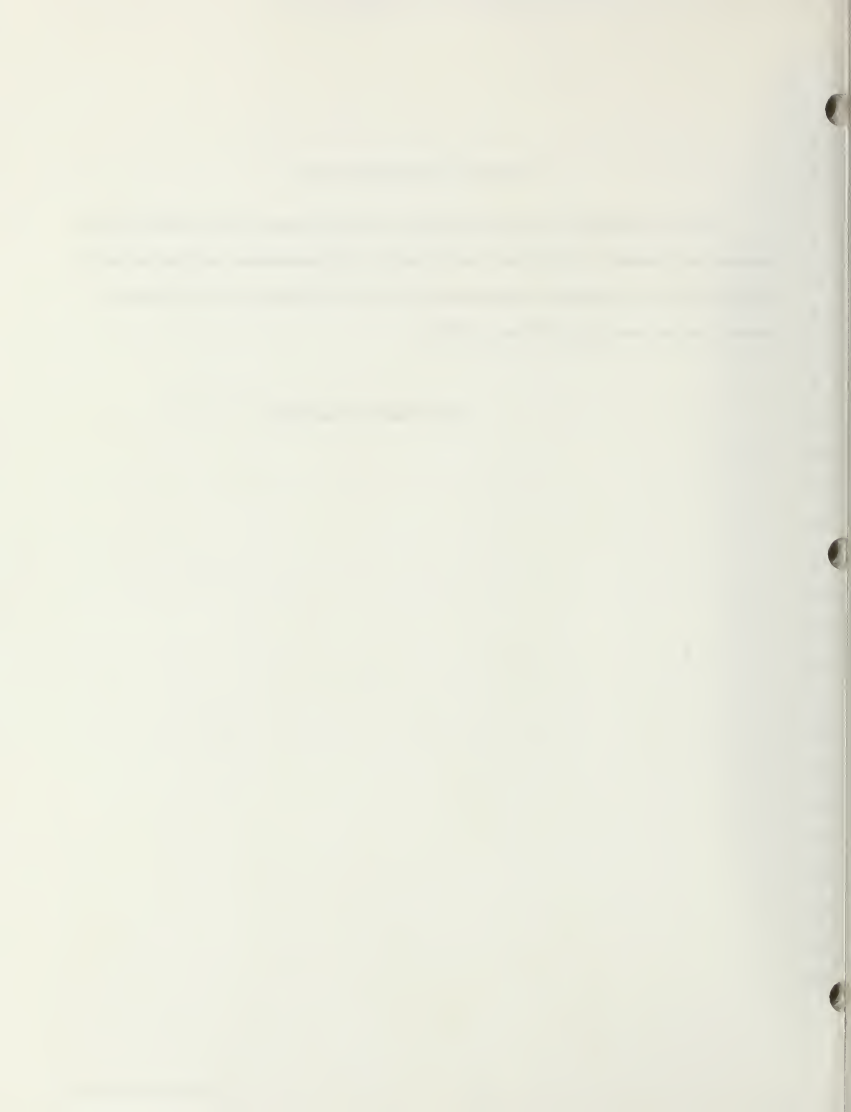




1  
2 CERTIFICATE OF SECRETARY

3 *I hereby certify that I am the duly elected and acting Secretary of the Treasure Island*  
4 *Development Authority, a California nonprofit public benefit corporation, and that the above*  
5 *Resolution was duly adopted and approved by the Board of Directors of the Authority at a*  
6 *properly noticed meeting on February 14, 2001.*  
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10 John Elberling, Secretary  
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MINUTES FOR REGULAR MEETING  
FEBRUARY 14, 2001

1:11 P.M. Room 400, City Hall  
1 Dr. Carlton Goodlett Place

1. Roll Call: Present: John Elberling - Vice Chair, William Fazande, Anne Halsted, Susan Po-Rufino, Doug Wong.

Excused: Gerald Green, James Morales

2. Mr. Wong moved that the Authority convene in closed session, Fazande seconded. Approved 5-0. The Authority voted 5-0 to hold closed session to confer with legal counsel as per (San Francisco Administrative Section 67.11 (b)) regarding real property negotiations. The Authority convened in closed session at 1:13 PM.

The Authority reconvened in open session at 1:55 PM.

3. Ms. Halsted made a motion not to disclose the discussion in closed session. Mr. Fazande seconded. Approved 5-0.

4. Approval of minutes: The minutes of January 10, 2001 were approved 5-0.

5. Communications: Ms. Conroy stated that a letter was received from Ron Smith, Vice-President of the Hospital Council. Mr. Smith would like nurses to be added to the Treasure Island housing preference group for the John Stewart housing units.

6. Director's Report given by Annemarie Conroy, Executive Director for TIDA.

Public Access - Ms. Conroy reported on upcoming events and activities on Treasure Island. Including an annual Baseball Luncheon held by Fox Sports Net with Commissioner Bud Zelig as the honored guest. San Francisco Little League held its Opening Day on January 15, 2001.

Environmental Clean up - Ms. Conroy reported that there are still issues with the THDI units. The project office is working with DTSC to address those issues.

Short-term leases - There are no new short-term leases.

Bay Bridge - Ms. Conroy reported that staff attended a meeting with Caltrans and members of the Governor's Office to discuss a memorandum of agreement regarding a mitigation package that includes ferry subsidies. Staff has also asked Caltrans to look at funding some positions in the project office and in their own office to make the construction project efficient and have a certain point of contact in each office.

Treasure Island Community - Ms. Conroy reported that Stephen Proud, Development Director and London Breed, Development Specialist, have been working very diligently with several entities that are interested in opening a convenient store on Treasure Island. The project office is working very closely with the John Stewart Company to bring a convenience store to the Island. Ms. Conroy reported that bus service has increased from once an hour on the weekends to once every 45 minutes. In addition, Joan Rummelsburg, Special Projects, has worked very closely with Muni to increase service on a regular basis during the weekdays beginning July 2001. Ms. Conroy continued to report that Muni has taken steps to ensure the safety of all bus passengers for the 108 line

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including adding cameras and painting lines at the Transbay Terminal to avoid alterations.

CAB - Ms. Conroy reported that the next CAB meeting is Wednesday February 21, 2001 at 7PM.

TIHDI - The project office continues to work with TIHDI on increasing their budget in the next fiscal year.

Financial Report - Ms. Conroy reported that the project office is on track for the Treasure Island residential rental revenues. However, we are below projections for commercial rental of Building 3 and Building 180. There is a pending strike with the movie industry, which has affected movie production.

Legislation and hearings affecting Treasure Island - The Sheriff's Department Sublease will go before the Board of Supervisors Finance Committee on Wednesday, February 28, 2001.

Mr. Elberling asked if Supervisor Daly proposed having a Board or committee meeting on Treasure Island. Ms. Conroy replied that he has mentioned it briefly. Ms. Conroy added that Supervisor Daly attended the January Treasure Island community meeting and wanted to have a Board of Supervisors hearing on Treasure Island to discuss city services for Treasure Island.

Mr. Elberling asked what kind of briefing is being done of the new members on the Board of Supervisors about the project. Ms. Conroy replied that staff has met with Supervisor Daly and will start on a schedule of visiting each Supervisor.

Mr. Elberling asked if the TIDA board members could receive packets for the CAB. Marianne Conarroe replied that there have not been any packages yet, and she will provide the Authority with all materials received by the CAB.

7. General Public Comment Ruth Gravanis commented that there was no report on the two responses for the RFQ.

#### 8. Ongoing Business by Directors and Introductions of New Business

Ms. Po-Rufino asked if the TIDA website was updated often so that the public can access the website and get information promptly. Ms. Conroy replied that the website is updated every two weeks. Ms. Conroy added that there were two respondents for the RFQ. The first group consist of two entities, Navillus Group with Cushman Wakefield. The second group consist of four different entities, Troon Pacific, Interland, Lennar and Kenwood Investments.

9. Resolution authorizing the Executive Director to extend a month- to- month sublease and increase the monthly rental rate for Building One, Room 307 with the San Francisco District Attorney's Office.

London Breed, Development Specialist, reported that on July 17, 2000 the Executive Director entered into a sublease with the San Francisco District Attorney's Office for the use of Room 307 in Building One for office space. From July 17th to December 22nd, 2000 The Bad Check Program of the District Attorney's Office occupied the space. On Monday, February 12, 2000, the Asset Forfeiture Unit of the District Attorney's Office moved into the space. The District Attorney's Office is interested in continuing the sublease with the Authority for at least one additional year. Staff is requesting a continuation of the sublease on a month- to- month basis for an additional one-year term. In addition, staff is requesting that the Authority approve the enclosed Amendment under Exhibit "A" to the sublease to increase the rental rate from \$2,700 to \$3,000 to account for the increase in administrative and utilities cost.

Mr. Fazande moved approval. Ms. Halsted seconded. Approved 5-0

10. Resolution authorizing the Executive Director to amend a license with the United States Navy and a sublease with the San Francisco Little League to extend the term for the use of the Little League field.

CONTENTS

ORIGINAL ARTICLES

THE EFFECT OF VITAMIN C ON THE URINARY EXCRETION OF URIC ACID

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Stephen Proud, Director of Development, stated that the Authority entered into a sublease with San Francisco Little League for the field on Treasure Island. SFLL has had the responsibility for bringing up the field to a playable condition in addition to the ongoing maintenance responsibility and including opening the field to other groups on Treasure Island to use on a pick-up game or scheduled basis. Four priority groups were established. They were Delancey Street Life Learning Academy, TIHDI, Treasure Island Elementary School and any John Stewart residents that wanted to use the field - the principle residents on the island. San Francisco Little League has met all obligations under the original sublease. Staff requests an extension of the Master License with the Navy for one additional year and an extension of the sublease with the San Francisco Little League for the same period through March 14, 2002.

Mr. Jesse Tepper, President SFLL, thanked the Authority for the opportunity to use the Treasure Island Field. Mr. Tempor continued with comments on the reconstruction of the field.

Mr. Wong asked how many San Francisco Little League teams. Mr. Tepper replied 15.

Mr. Wong moved approval. Ms. Halsted seconded. Approved 5-0

11. Meeting adjourned at 2:18 PM

[Return to Meetings Page](#)

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OFFICE OF THE MAYOR  
SAN FRANCISCO



WILLIE LEWIS BROWN, JR.

14/01  
TREASURE ISLAND PROJECT  
410 AVENUE OF THE PALMS  
BUILDING 1, 2ND FLOOR  
TREASURE ISLAND  
SAN FRANCISCO, CA 94130  
(415) 274-0660  
FAX (415) 274-0299

TREASURE ISLAND DEVELOPMENT AUTHORITY  
MEETING AGENDA

Wednesday, March 14, 2001 1 P.M.

DOCUMENTS DEPT.

Room 400, City Hall  
1 Dr. Carlton Goodlett Place

Willie L. Brown, Jr., Mayor

MAR - 9 2001

SAN FRANCISCO  
PUBLIC LIBRARY

DIRECTORS

John Elberling, Vice-Chairman  
William Fazande  
Susan Po-Rufino  
Doug Wong

Gerald Green  
Anne Halsted  
James Morales

Annemarie Conroy, Executive Director  
London Breed, Commission Secretary

ORDER OF BUSINESS

1. Call to Order and Roll Call
2. Approval of Minutes (*Action Item*)
3. Communications (*Discussion Item*)
4. Report of the Treasure Island Project Director Annemarie Conroy (*Discussion Item*)
  - Report on access to Treasure Island including public use last month
  - Status of environmental clean up
  - Report on short-term leases
  - Report on San Francisco-Oakland Bay Bridge/Caltrans issues
  - Report on Treasure Island community issues
  - Report on Citizens Advisory Board
  - Report on TIHDI
  - Financial Report
  - Legislation/hearings affecting Treasure Island
5. General Public Comment (*Discussion Item*)
6. Ongoing Business by Directors and Introduction of New Business by members (*Discussion Item*)
7. Resolution approving a Contract with URS for \$300,000 to Prepare a programmatic Environmental Impact Report for Former Naval Station Treasure Island (*Action Item*)
8. Resolution accepting five murals by artist Miguel Covarrubias from the 1939 Pan-Pacific Exposition on Treasure Island as gifts from the Port of San Francisco (*Action Item*)
9. Resolution Authorizing the Executive Director to Extend a Month-to-Month Sublease for Building 99 with Island Creative Management, Inc. (*Action Item*)

10. Resolution Authorizing the Executive Director to Extend a Month-to-Month Sublease for Building 62 with W Wong Construction Company, Inc. (*Action Item*)
11. Resolution Authorizing the Executive Director to Execute an Amendment to the Land and Structures Master Lease with the United States Navy to add 35,000 square feet of Paved Property (*Action Item*)
12. Resolution Authorizing the Executive Director to Execute a Sublease with the Treasure Island Homeless Development Initiative for 35,000 Square Feet of Paved Property (*Action Item*)
13. Resolution Authorizing the Executive Director to Execute a Contract with Toolworks, Inc. a Member Organization of the Treasure Island Homeless Development Initiative, and a California Public Benefit Corporation, For an amount not to exceed \$125,000 to provide janitorial and other building services for the period of March 2001 through February 2002 (*Action Item*)
14. Resolution Authorizing an Amendment to the Sublease with the John Stewart Company to Expand the "San Francisco Essentials" Preference Category to include Licensed Health Care Professionals (*Action Item*)
15. Adjourn

*Relevant documents such as resolutions, staff summaries, leases, subleases are available at the Treasure Island Project Office and the Government Information Center at the Main Library, 100 Larkin Street. Public comment is taken on each item on the agenda.*

#### MEETING AGENDAS NOW AVAILABLE ON E-MAIL

If you would like to receive TIDA meeting agendas by e-mail, rather than through U.S. Postal Service mail, please send your name and e-mail address to [TIDA@ci.sf.ca.us](mailto:TIDA@ci.sf.ca.us).

#### Disability Access

The Treasure Island Development Authority will meet at City Hall, 1 Dr. Carlton Goodlett Place. City Hall is accessible to persons using wheelchairs, and others with disabilities. For American Sign Language interpreters or use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please telephone 554-6789 at least 72 hours before a meeting.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.

The closest accessible BART is Civic Center, three blocks from the City Hall at the intersection of Market, Grove and Hyde Streets. Accessible MUNI lines serving this location are: #42 Downtown Loop, 9 San Bruno and the #71 Haight/Noriega. Accessible Muni Metro lines are J, K, L, M and N stopping at the Muni Metro Civic Center Station at Market and Van Ness. For more information about MUNI accessible services, call 923-6142. Accessible curbside parking is available on Grove Street.

#### TREASURE ISLAND WEBSITE

Check out the Treasure Island website at [www.ci.sf.ca.us/treasureisland](http://www.ci.sf.ca.us/treasureisland) to find out about activities and facilities on Treasure Island, special events venues for rent, or to review the Treasure Island Development Authority's agendas and minutes.









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**Minutes of Meeting**  
**Treasure Island Development Authority**  
February 14, 2001

1. Call to order: 1:11 PM in Room 400 in City Hall

Roll Call                      Present:     John Elberling, Vice-Chair  
   William Fazande  
   Anne Halsted  
   Susan Po-Rufino  
   Doug Wong

   Excused:     Gerald Green  
   James Morales

2. Mr. Wong moved that the Authority convene in closed session, Fazande seconded. Approved 5-0. The Authority voted 5-0 to hold closed session to confer with legal counsel as per (San Francisco Administrative Section 67.11 (b)) regarding real property negotiations. The Authority convened in closed session at 1:13 PM.

The Authority reconvened in open session at 1:55 PM

3. Ms. Halsted made a motion not to disclose the discussion in closed session. Mr. Fazande seconded. Approved 5-0

4. Approval of minutes: The minutes of January 10, 2001 were approved 5-0

5. Communications: Ms. Conroy stated that a letter was received from Ron Smith, Vice-President of the Hospital Council. Mr. Smith would like nurses to be added to the Treasure Island housing preference group for the John Stewart housing units.

6. Director's Report given by Annemarie Conroy, Executive Director for TIDA.

- Public Access - Ms. Conroy reported on upcoming events and activities on Treasure Island. Including an annual Baseball Luncheon held by Fox Sports Net with Commissioner Bud Zelig as the honored guest. San Francisco Little League held its Opening Day on January 15, 2001.
- Environmental Clean up – Ms. Conroy reported that there are still issues with the TIHDI units. The project office is working with DTSC to address those issues.
- Short-term leases - There are no new short-term leases.
- Bay Bridge – Ms. Conroy reported that staff attended a meeting with Caltrans and members of the Governor's Office to discuss a memorandum of agreement regarding a mitigation package that includes ferry subsidies. Staff has also asked Caltrans to look at funding some positions in the project office and in their own office

to make the construction project efficient and have a certain point of contact in each office.

- Treasure Island Community – Ms. Conroy reported that Stephen Proud, Development Director and London Breed, Development Specialist, have been working very diligently with several entities that are interested in opening a convenient store on Treasure Island. The project office is working very closely with the John Stewart Company to bring a convenience store to the Island. Ms. Conroy reported that bus service has increased from once an hour on the weekends to once every 45 minutes. In addition, Joan Rummelsburg, Special Projects, has worked very closely with Muni to increase service on a regular basis during the weekdays beginning July 2001. Ms. Conroy continued to report that Muni has taken steps to ensure the safety of all bus passengers for the 108 line including adding cameras and painting lines at the Transbay Terminal to avoid altercations.
- CAB – Ms. Conroy reported that the next CAB meeting is Wednesday February 21, 2001 at 7PM.
- TIHDI – The project office continues to work with TIHDI on increasing their budget in the next fiscal year.
- Financial Report – Ms. Conroy reported that the project office is on track for the Treasure Island residential rental revenues. However, we are below projections for commercial rental of Building 3 and Building 180. There is a pending strike with the movie industry, which has affected movie production.
- Legislation and hearings affecting Treasure Island – The Sheriff's Department Sublease will go before the Board of Supervisors Finance Committee on Wednesday, February 28, 2001.

Mr. Elberling asked if Supervisor Daly proposed having a Board or committee meeting on Treasure Island. Ms. Conroy replied that he has mentioned it briefly. Ms. Conroy added that Supervisor Daly attended the January Treasure Island community meeting and wanted to have a Board of Supervisors hearing on Treasure Island to discuss city services for Treasure Island.

Mr. Elberling asked what kind of briefing is being done of the new members on the Board of Supervisors about the project. Ms. Conroy replied that staff has met with Supervisor Daly and will start on a schedule of visiting each Supervisor.

Mr. Elberling asked if the TIDA board members could receive packets for the CAB. Marianne Conarroe replied that there have not been any packages yet, and she will provide the Authority with all materials received by the CAB.

#### 7. General Public Comment

Ruth Gravanis commented that there was no report on the two responses for the RFQ.

#### 8. Ongoing Business by Directors and Introductions of New Business

Ms. Po-Rufino asked if the TIDA website was updated often so that the public can access the website and get information promptly. Ms. Conroy replied that the website is updated every two weeks. Ms. Conroy added that there were two respondents for the RFQ. The first group consist of two entities, Navillus Group with Cushman Wakefield. The second group consist of four different entities, Troon Pacific, Interland, Lennar and Kenwood Investments.

9. Resolution authorizing the Executive Director to extend a month- to- month sublease and increase the monthly rental rate for Building One, Room 307 with the San Francisco District Attorney's Office.

London Breed, Development Specialist, reported that on July 17, 2000 the Executive Director entered into a sublease with the San Francisco District Attorney's Office for the use of Room 307 in Building One for office space. From July 17<sup>th</sup> to December 22<sup>nd</sup>, 2000 The Bad Check Program of the District Attorney's Office occupied the space. On Monday, February 12, 2000, the Asset Forfeiture Unit of the District Attorney's Office moved into the space. The District Attorney's Office is interested in continuing the sublease with the Authority for at least one additional year. Staff is requesting a continuation of the sublease on a month- to- month basis for an additional one-year term. In addition, staff is requesting that the Authority approve the enclosed Amendment under Exhibit "A" to the sublease to increase the rental rate from \$2,700 to \$3,000 to account for the increase in administrative and utilities cost.

Mr. Fazande moved approval. Ms. Halsted seconded. Approved 5-0

10. Resolution authorizing the Executive Director to amend a license with the United States Navy and a sublease with the San Francisco Little League to extend the term for the use of the Little League field.

Stephen Proud, Director of Development, stated that the Authority entered into a sublease with San Francisco Little League for the field on Treasure Island. SFLL has had the responsibility for bringing up the field to a playable condition in addition to the ongoing maintenance responsibility and including opening the field to other groups on Treasure Island to use on a pick-up game or scheduled basis. Four priority groups were established. They were Delancey Street Life Learning Academy, TIHDI, Treasure Island Elementary School and any John Stewart residents that wanted to use the field – the principle residents on the island. San Francisco Little League has met all obligations under the original sublease. Staff requests an extension of the Master License with the Navy for one additional year and an extension of the sublease with the San Francisco Little League for the same period through March 14, 2002.

Mr. Jesse Tepper, President SFLL, thanked the Authority for the opportunity to use the Treasure Island Field. Mr. Tempore continued with comments on the reconstruction of the field.

Mr. Wong asked how many San Francisco Little League teams. Mr. Tepper replied 15.

Mr. Wong moved approval. Ms. Halsted seconded. Approved 5-0

11. Meeting adjourned at 2:18 PM























**AGENDA ITEM**  
**Treasure Island Development Authority**  
**City and County of San Francisco**

**Subject:** Resolution Approving a Contract with URS  
To Prepare a Programmatic Environmental  
Impact Report (EIR) for Former Naval  
Station Treasure Island

**Agenda Item No. 7**  
**Meeting of March 14, 2001**

**Contact/Phone:** Annemarie Conroy, Executive Director  
Stephen Proud, Director of Development  
274-0660

**SUMMARY OF PROPOSED ACTION:**

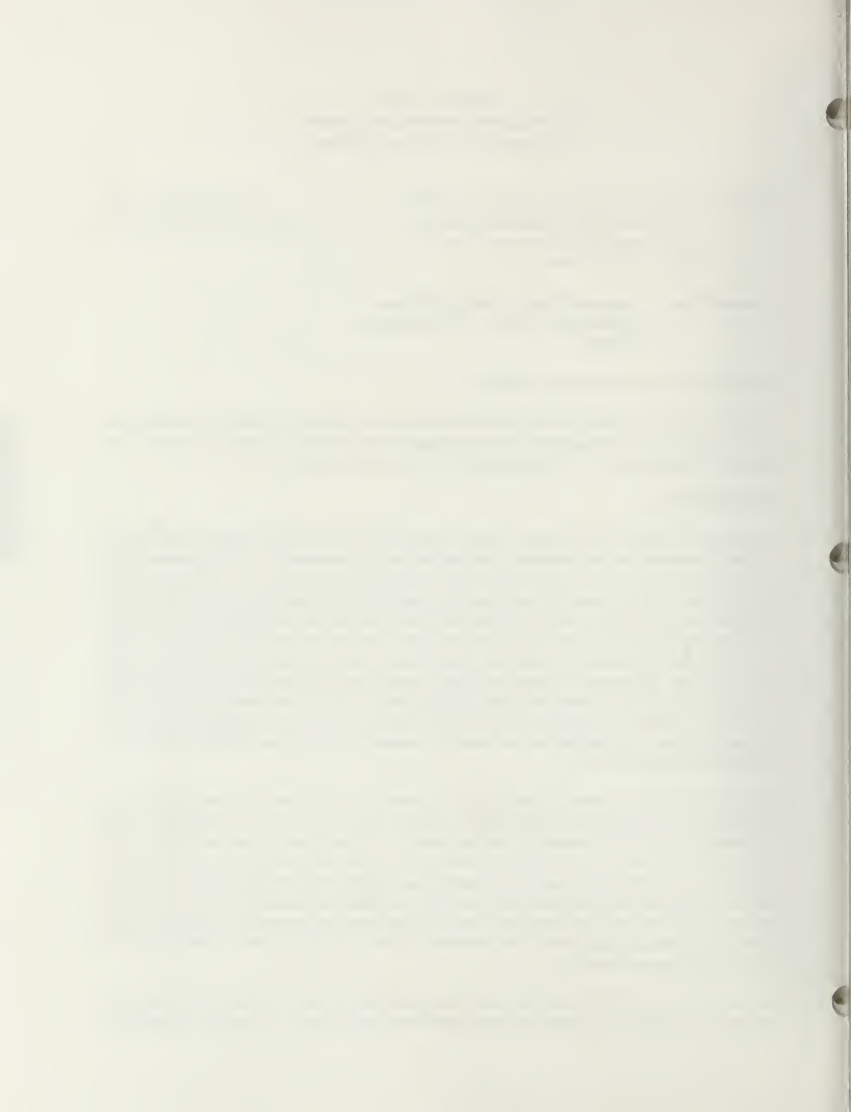
Approval of the resolution would authorize the Executive Director to execute a contract with URS to prepare a programmatic environmental impact report for the conveyance of former Naval Station Treasure Island to the Treasure Island Development Authority.

**BACKGROUND**

The transfer of former Naval Station Treasure Island (TI) from the Department of the Navy to Authority requires two environmental evaluations: an Environmental Impact Statement (EIS) that complies with the National Environmental Protection Act (NEPA) and an Environmental Impact Report (EIR) that complies with the California Environmental Quality Act (CEQA). San Francisco and Navy began working together on a joint EIR/EIS for the disposal and reuse of TI following the publication of an Initial Study/Notice of Preparation in 1996. In 1998, the San Francisco Planning Commission adopted environmental baseline conditions pursuant to CEQA section 15229. Subsequently, there have been several administrative drafts of a joint Draft EIR/EIS, but the Navy has been unwilling to address the City's concerns about the draft's CEQA compliance. Through meetings with the City's Planning staff and representatives of the City Attorney's Office, a determination was made to separate the NEPA and CEQA processes to facilitate the conveyance of TI.

On June 14, 2000, the Authority authorized the issuance of a Request for Proposals (RFP) for consultant services to prepare a programmatic EIR for Treasure Island. The programmatic EIR is intended to allow the Authority to realize several goals including: (i) the conveyance of TI from the Navy to the Authority; (ii) the expansion and redevelopment of the marina; (iii) the adoption of a redevelopment plan for the Base; (iv) an upgrade to the existing causeway between Treasure Island and Yerba Buena Island; and (v) the planning and implementation of a new ferry landing. The EIR should also serve as the basis for long-term implementation of the City's Draft Reuse Plan, although supplemental environmental review may be required in connection with specific development proposals.

On December 21, 2000, the Authority issued and distributed the RFP (a copy is attached to this summary as Exhibit A) to nine potential contractors who possess the requisite expertise to





complete the EIR. On February 9, 2001, the Authority received responses from three firms (URS Corporation, EIP, and EDAW) to conduct the scope of work set forth in the RFP.

On February 22, 2001, a selection Committee comprised of members of the Treasure Island Development Authority Staff, the Planning Department's Office of Environmental Review, and the City Attorney's Office reviewed the responses to the RFP. The Selection Committee concluded unanimously that the URS Corporation was the superior respondent based on their project approach, understanding of the assignment, and composition and experience of the team. Subconsultants of the URS team include Mara Feeny & Associates (socioeconomics and population), The Duffy Company (transportation and waterfront planning), Stephen Sheppard (visual resources and urban design), and JRP Consulting Services (historic architecture).

In general, the proposed scope of work follows the tasks set forth in the RFP. The following briefly summarizes the project approach proposed by URS:

1. Review existing data including the current administrative draft EIS/R prepared by the Navy and relevant supporting technical reports.
2. Prepare task plans for each resource area to identify issues, questions, and proposed modifications to the existing technical analysis.
3. Execute the task plans.
4. Prepare technical memorandum for each of the resource areas that include the results of a peer review and technical analysis identified in the task plans. These memorandums form the basis for the changes to the Navy's Document and they provide an administrative record.
5. Prepare and distribute a Draft EIR (DEIR).
6. Respond to comments to the DEIR.
7. Finalize Comments and Responses Document, incorporate changes to the DEIR and prepare and issue Final EIR.

Upon authorization of the contract, work will begin on the EIR based on the schedule set forth in the proposal. The proposal contemplates a 15-month work schedule that would lead to the production of a final EIR in the Spring of 2002.

The budget for the scope of work set forth in the proposal is \$243,552. The fee proposal is based on certain assumptions including:

- A level of effort by technical specialists that assumes that existing work done by that Navy will need to be refined and "tweaked" but that we are not starting over from scratch;
- That there will be no new modeling or field work required;

1. The first part of the document is a letter from the President of the United States to the Congress, dated January 1, 1861.

2. The second part is a report from the Secretary of the Treasury, dated January 1, 1861, on the state of the Treasury.

3. The third part is a report from the Secretary of the Interior, dated January 1, 1861, on the state of the Interior.

4. The fourth part is a report from the Secretary of the Navy, dated January 1, 1861, on the state of the Navy.

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14. The fourteenth part is a report from the Secretary of the State, dated January 1, 1861, on the state of the State.

15. The fifteenth part is a report from the Secretary of the War, dated January 1, 1861, on the state of the War.

- That the comments on the draft document will be of a certain number and complexity; and
- The printing and distribution costs are based on an assumed size of the document.

While the Navy has agreed to provide the Authority with copies of technical reports prepared for previous administrative drafts of the EIR/EIS, to date staff has not received these documents and therefore has not had an opportunity to review the methodology for collecting and the quality of data contained in these reports. Given this lack of knowledge, staff is requesting that the contract with URS contain a 20% contingency budget of approximately \$50,000 to provide the flexibility necessary to complete the proposed scope of work. Thus, the total amount of the contract is \$300,000.

**Recommendation:** Staff recommends Authority Board approval of the contract.

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1100 EAST 58TH STREET  
CHICAGO, ILL. 60637  
TEL: 773-936-5000  
FAX: 773-936-5001  
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**EXHIBIT A - COPY OF REQUEST FOR PROPOSALS**

CITY AND COUNTY OF SAN FRANCISCO  
TREASURE ISLAND DEVELOPMENT AUTHORITY

Request For Qualifications and Proposals for  
Environmental Impact Report Consultant Services  
For Conveyance of Former Naval Station Treasure Island

December 2000

Deadline For Submission: February 9, 2001, 5:00 p.m. PST



# Treasure Island Development Authority

## Request for Qualifications and Proposals for EIR Consultant

### Table of Contents:

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III.	Submission Requirements .....	4
IV.	Evaluation and Selection Criteria.....	6
V.	Schedule.....	7
VI.	Terms and Conditions for Receipt of Proposals .....	8
VII.	Contract Requirements .....	12

### Appendices:

- A. Human Rights Commission Forms 3 and 4
- B.
- B. Chapters 12B, 12C and 12D of the San Francisco Administrative Code, and related forms:
  - Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits (form HRC-12B-101)
  - Reasonable Measures Affidavit (form HRC-12B-102)
  - Substantial Compliance Authorization Form (form HRC-12B-103)
- C. IRS form W-9, Request for Taxpayer Identification Number and Certification. If you have not informed the Authority of your Federal Employer Identification Number (if you are a company) or your Social Security Number (if you are an individual or sole proprietor), you must submit this form with your proposal.
- D. Agreement for Professional Services (form P-500)
- E. Business Tax Registration Declaration (form P-25)

## I. INTRODUCTION

As part of the process of transferring former Naval Station Treasure Island (including portions of both Treasure Island and Yerba Buena Island) from the Department of the Navy to the Treasure Island Development Authority, the Authority and the Navy have been preparing a joint Environmental Impact Report/Environmental Impact Statement ("EIR/EIS") for its disposal and reuse. An Initial Study/Notice of Preparation was published and public comments were received in 1996 and 1998, and the Planning Commission adopted environmental baseline conditions pursuant to the California Environmental Quality Act ("CEQA") Guidelines Section 15229.

Although there have been several administrative drafts of a joint Draft EIR/S prepared, the two parties have determined that it is necessary to separate the National Environmental Protection Act ("NEPA") and CEQA processes. Thus, the City intends to prepare and certify, on an expedited basis, its own, separate programmatic EIR that fully complies with CEQA requirements.

The programmatic EIR is intended to allow the Authority to realize several goals including: (i) the conveyance of TI from the Navy to the Authority; (ii) the expansion and redevelopment of the marina; (iii) the adoption of a redevelopment plan for the Base; (iv) an upgrade to the existing causeway between Treasure Island and Yerba Buena Island; and (v) the installation and use of a new ferry landing. The EIR should also serve as the basis for long-term implementation of the City's Draft Reuse Plan, although supplemental environmental review may be required in connection with specific development proposals.

To assist in this effort, the Navy will supply the Authority with copies of technical reports prepared for the Draft EIR/S, copies of all scoping letters, and a copy of the November 1998 administrative draft EIR/S.

## II. SCOPE OF WORK

The following Scope of Work is to be used as a general guide and is not intended to be a complete list of all activities and operations that may be permitted by the Authority.

### Tasks

#### Task 1: Coordination and Consultation.

The selected consultant will be required to coordinate its efforts with Planning Department and Treasure Island Development Authority staff.

#### Task 2: Review, Update and Prepare Draft EIR

The selected consultant will review the modified 1998 administrative Draft EIR/S, update and further modify as necessary, and prepare a final administrative draft of the DEIR for internal review. It is anticipated that existing technical background reports may require supplementation to reflect 2000 conditions and revised projections for the analysis years of 2010 and 2015. The proposed development alternatives may be modified to include a more detailed development plan for the marina, requiring more project-specific analysis of this use and other possible new uses. In general, however, the development scenarios analyzed in previous drafts will not change substantially. Feasible mitigation measures for significant, unavoidable impacts will be developed iteratively with Department staff. Mitigation will likely be programmatic and may be incorporated into proposed alternatives. The Draft EIR may explicitly identify the need for additional environmental analysis associated with certain subsequent activities and/or development (e.g. some infrastructure improvements and commercial developments).

#### Task 3: Circulate Draft EIR/Public Hearing

The selected consultant shall prepare a Notice of Completion, and shall produce and distribute up to 400 copies of the Draft EIR. The consultant shall arrange for preparation of a transcript of the public hearing.

#### Task 4: Response to Comments

At the direction of the Planning Department's environmental analysis staff, the consultant will organize comments received orally and in writing during the comment period, and shall prepare draft responses for review by Department staff, along with proposed changes to the text of the Draft EIR. Consultant work products will be subject to two rounds of review and revision prior to finalization. Approximately 400 copies of the Summary of Comments and Responses document shall be produced and distributed.

#### Task 5: Final EIR Preparation

Following certification of the Draft EIR by the Planning Commission and the TDIA, the selected consultant shall prepare a Final EIR, consisting of the Summary of Comments and Responses and

the Draft EIR, as modified in Task 4. The Final EIR shall be prepared and distributed in advance of any hearings at the Board of Supervisors to consider EIR certification.

For the tasks listed above, respondents should plan to attend all public hearings, provide information as necessary at and prior to the public hearings, and help Planning Department Staff respond to questions from city, state or regional agencies, including the Authority, the Planning Commission, and/or the Board of Supervisors.

### III. SUBMISSION REQUIREMENTS

#### A. Time and Place for Submission of Proposals

Proposals must be received by 5:00 p.m. PST, on February 9, 2001. Proposals may be delivered in person and left with:

Stephen Proud, Director of Development  
Treasure Island Development Authority  
410 Avenue of Palms, Building 1, Second Floor  
Treasure Island  
San Francisco, CA 94130

Proposers shall submit five copies in a sealed envelope clearly marked Treasure Island EIR RFQ/P. Proposals submitted by fax will not be accepted.

#### B. Format and Content of Proposals

Firms interested in responding to this RFQ/P must submit the following information, in the order specified below:

1. Introduction and Executive Summary (up to 2 pages)

Submit a letter of introduction and executive summary of the proposal. A person authorized by your firm to obligate your firm to perform the commitments contained in the proposal must sign the letter. Submission of the letter will constitute a representation by your firm that your firm is willing and able to perform the commitments contained in the proposal.

2. Project Approach (up to 3 pages)

Describe the services and activities that your firm proposes to provide to the Authority. Include the tasks necessary to achieve the Authority's objectives and satisfy the scope of activity articulated herein, as well as a schedule for completion of these tasks.

3. Qualifications (up to 5 pages)

Provide information on respondent's background and qualifications which addresses the following:

- a. Name, address, and telephone number of a contact person;
- b. A brief description of your firm, as well as how any joint venture or association would be structured; and

- c. A description of not more than three Environmental Impact Reports prepared by your firm including number and client, reference and telephone numbers, staff members who worked on each project, budget, schedule and project summary. Descriptions should be limited to one page for each project. If joint consultants or subconsultants are proposed provide the above information for each.
- 4. Team Qualifications (up to 4 pages)
  - a. Provide a list identifying: (i) each key person on the project team, (ii) the project manager, (iii) the role each will play in the project, and (iv) a written assurance that the key individuals listed and identified will be performing the work and will not be substituted with other personnel or reassigned to another project without the Authority's prior approval.
  - b. Provide a description of the experience and qualifications of the project team members, including brief resumes if necessary.

5. References (up to 2 pages)

Provide references for the lead consulting firm, lead project manager, and all subconsultants, including the name, address and telephone number of three or more recent clients (preferably other public agencies).

6. Fee Proposal

The Authority intends to award this contract to the firm that it considers will provide the best overall program services. The Authority reserves the right to accept other than the lowest priced offer and to reject any proposals that are not responsive to this request.

Please provide a fee proposal that includes the following:

- a. Total fee for each of the tasks identified in the Scope of Work with a not to exceed figure; and
- b. Hourly rates for all team members. Hourly rates and itemized costs may be used to negotiate changes in the Scope of Work if necessary.

#### IV. EVALUATION AND SELECTION CRITERIA

##### A. Selection Criteria

A selection committee comprised of parties with expertise in development and environmental impact analysis will evaluate the proposals. The Authority intends to evaluate the proposals generally in accordance with the criteria itemized below. Two or more firms with the highest scoring proposals may be interviewed by the committee, if necessary, to make the final selection.

1. Project Approach (40 points)
  - a. Demonstrated understanding of stated objectives and tasks;
  - b. Demonstrated ability to perform complex environmental analysis and to prepare programmatic EIR's for specific plans, base reuse and/or redevelopment plans;
  - c. Suggested strategy and schedule that will allow the Authority to meet its objectives as efficiently as possible; and
  - d. Fee proposal to conduct the scope of work.
2. Assigned Project Staff (30 points)
  - a. Recent experience of staff assigned to the project and a description of the tasks to be performed by each staff person;
  - b. Professional qualifications and education;
  - c. Workload, staff availability and accessibility.
3. Experience of Firm and Subconsultants (30 points)
  - a. Expertise of the firm and subconsultants in the fields necessary to complete the tasks; and
  - b. Quality of recently completed projects, including adherence to schedules, deadlines and budgets; and
  - c. Experience with similar projects.

Following the evaluation of the written proposals, two or more of the proposers may be invited to an oral interview. If conducted, the interview will consist of standard questions asked of each of the proposers, and specific questions regarding each individual proposal. The written proposals may then be re-scored based on information presented at the interview and the criteria articulated above.

## V. SCHEDULE

### A. Pre-Proposal Conference

Proposers are encouraged to attend a pre-proposal conference on Tuesday, January 16, 2001 at 10 a.m. to be held at the Treasure Island Project Office, Treasure Island, Building 1, 2<sup>nd</sup> Floor. All questions will be addressed at this conference and any available new information will be provided at that time. If you have further questions regarding the RFQ/P, please contact Stephen Proud at 415.274.0342 or Rick Cooper at 415.558.5974.

The Authority will keep a record of all parties who request and receive copies of the RFQ/P. Any requests for information concerning the RFQ/P whether submitted before or after the pre-proposal conference, must be in writing, and any substantive replies will be issued as written addenda to all parties who have requested and received a copy of the RFQ/P from the Treasure Island Development Authority. Questions raised at the pre-proposal conference may be answered orally. If any substantive new information is provided in response to questions raised at the pre-proposal conference, it will also be memorialized in a written addendum to this RFQ/P and will be distributed to all parties that received a copy of the RFQ/P. No questions or requests for interpretation will be accepted after January 29, 2001.

### B. Schedule

The anticipated schedule for selecting a consultant is shown below:

<u>Proposal Phase</u>	<u>Date</u>
RFQ/P is advertised and issued by the Authority	December 21, 2000
Pre-proposal conference	January 16, 2001
Deadline for submission of written questions or requests for clarification	January 29, 2001
Proposals due	February 9, 2001

### C. Contract Award

The Treasure Island Development Authority will select a proposer with whom Planning Department and Treasure Island staff shall commence contract negotiations. The selection of any proposal shall not imply acceptance by the Authority of all terms of the proposal, which may be subject to further negotiation and approvals before the Authority may be legally bound thereby. If a satisfactory contract cannot be negotiated in a reasonable time the Authority, in its sole discretion, may terminate negotiations with the highest ranked proposer and begin contract negotiations with the next highest ranked proposer.



## VI. TERMS AND CONDITIONS FOR RECEIPT OF PROPOSALS

### A. Errors and Omissions in RFQ/P

Proposers are responsible for reviewing all portions of this RFQ/P. Proposers are to promptly notify the Authority, in writing, if the proposer discovers any ambiguity, discrepancy, omission, or other error in the RFQ/P. Any such notification should be directed to the Authority promptly after discovery, but in no event later than five (5) working days prior to the date for receipt of proposals. Modifications and clarifications will be made by addenda as provided below.

### B. Inquiries Regarding RFQ/P

Inquiries regarding the RFQ/P other than inquiries at the pre-proposal conference, and all oral notifications of an intent to request written modification or clarification of the RFQ/P, must be directed to:

Stephen Proud, Director of Development  
Treasure Island Development Authority  
410 Avenue of Palms, Building 1, Second Floor  
Treasure Island  
San Francisco, CA 94130  
415.274.0342

### C. Addenda to RFQ/P

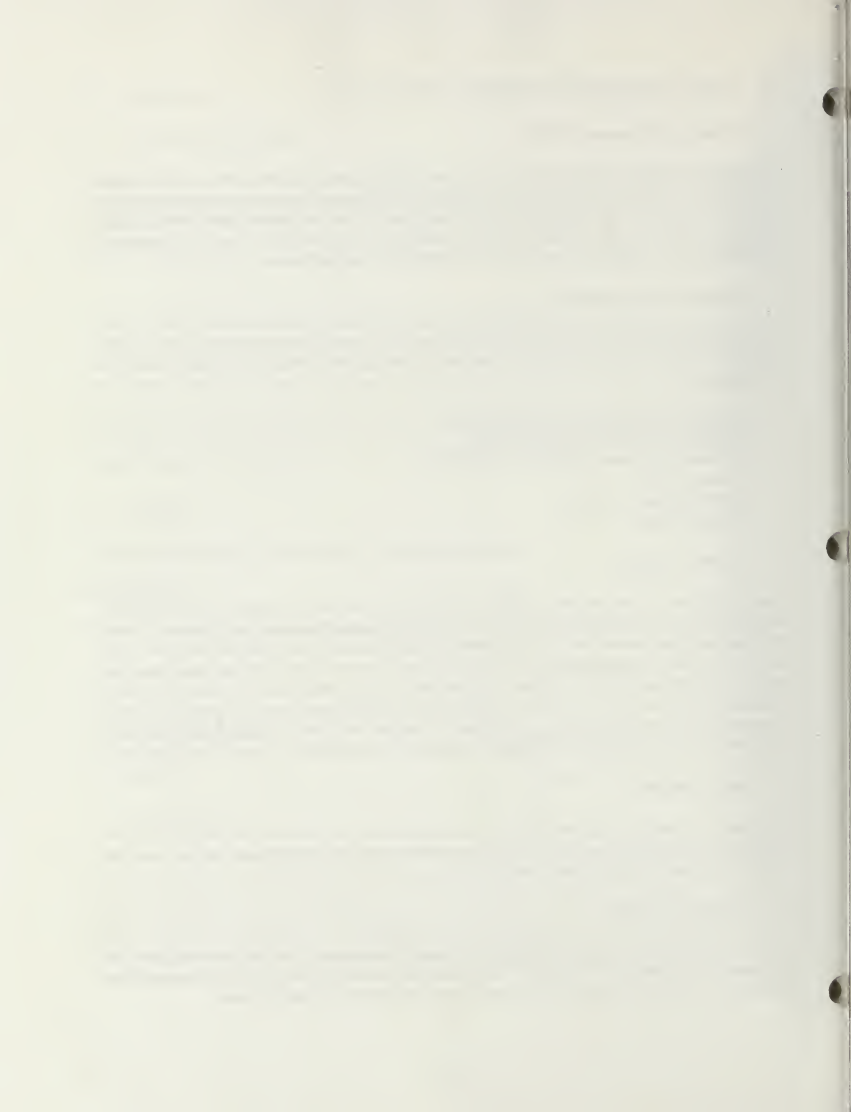
The Authority may modify the RFQ/P, prior to the proposal due date, by issuing written addenda. Addenda will be sent via regular, first class U.S. mail to the last known business address of each firm listed with the Authority as having received a copy of the RFQ/P for proposal purposes. The Authority will make reasonable efforts to notify proposers in a timely manner of modifications to the RFQ/P. Notwithstanding this provision, the proposer shall be responsible for ensuring that its proposal reflects any and all addenda issued by the Authority prior to the proposal due date regardless of when the proposal is submitted. Therefore, the Authority recommends that the proposer call before submitting its proposal to determine if the proposer has received all addenda.

### D. Term of Proposal

Submission of a proposal signifies that the proposed services and prices are valid for 120 calendar days from the proposal due date and that the quoted prices are genuine and not the result of collusion or any other anti-competitive activity.

### E. Revision of Proposal

A proposer may revise a proposal on the proposer's own initiative at any time before the deadline for submission of proposals. The proposer must submit the revised proposal in the same manner as the original. A revised proposal must be received on or before the proposal due date.



In no case will a statement of intent to submit a revised proposal, or commencement of a revision process, extend the proposal due date for any proposer.

At any time during the proposal evaluation process, the Authority may require a proposer to provide oral or written clarification of its proposal. The Authority reserves the right to make an award without further clarifications of proposals received.

#### F. Errors and Omissions in Proposal

Failure by the Authority to object to an error, omission, or deviation in the proposal will in no way modify the RFQ/P or excuse the vendor from full compliance with the specifications of the RFQ/P or any contract awarded pursuant to the RFQ/P.

#### G. Financial Responsibility

The Authority accepts no financial responsibility for any costs incurred by a firm in responding to this RFQ/P. Submissions of the RFQ/P will become the property of the Authority and may be used by the Authority in any way deemed appropriate.

#### H. Proposer's Obligations Under the Campaign Reform Ordinance

Proposers must comply with Section 16.510-2 of the S.F. Administrative Code, which states:

No person who contracts with the City and County of San Francisco, for the rendition of personal services, for the furnishing of any material, supplies or equipment to the City, or for selling any land or building to the City, whenever such transaction would require approval by a City elective officer, or the board on which that City elective officer serves, shall make any contribution to such an officer, or candidates for such an office, or committee controlled by such officer or candidate at any time between commencement of negotiations and either the completion of, or the termination of, negotiations for such contract.

If a proposer is negotiating for a contract that must be approved by an elected local officer or the board on which that officer serves, during the negotiation period the proposer is prohibited from making contributions to:

- The officer's re-election campaign
- A candidate for that officer's office
- A committee controlled by the officer or candidate

The negotiation period begins with the first point of contact, either by telephone, in person, or in writing, when a contractor approaches any Authority officer or employee about a particular contract, or a Authority officer or employee initiates communication with a potential contractor about a contract. The negotiation period ends when a contract is awarded or not awarded to the contractor. Examples of initial contacts include: (i) a vendor contacts an Authority officer or employee to promote himself or herself as a candidate for a contract; and (ii) an Authority officer or employee contacts a contractor to propose that the contractor apply for a contract. Inquiries for information

about a particular contract, requests for documents relating to a Request for Proposal, and requests to be placed on a mailing list do not constitute negotiations.

Persons who knowingly or willfully violate section 16.510-2 are subject to a fine of up to \$500 and a jail term of six months, or both. (S.F. Administrative Code Section 16.515(a)). Persons who negligently violate section 16.510-2 are subject to a civil penalty of up to \$500. (S.F. Administrative Code Section 16.515(b)).

For further information, proposers should contact the San Francisco Ethics Commission at (415) 554-9510.

#### I. Sunshine Ordinance

In accordance with S.F. Administrative Code Section 67.24(e), contractors' bids, responses to RFQ/P's and all other records of communications between the Authority and persons or firms seeking contracts shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefits until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

#### J. Public Access to Meetings and Records

If a proposer is a non-profit entity that receives a cumulative total per year of at least \$250,000 in Authority-funds or Authority-administered funds and is a non-profit organization as defined in Chapter 12L of the San Francisco Administrative Code, the proposer must comply with the reporting requirements of that Chapter. The proposer must include in its proposal (1) a statement describing its efforts to comply with the Chapter 12L provisions regarding public access to proposer's meetings and records, and (2) a summary of all complaints concerning the proposer's compliance with Chapter 12L that were filed with the City in the last two years and deemed by the City to be substantiated. The summary shall also describe the disposition of each complaint. If no such complaints were filed, the proposer shall include a statement to that effect. Failure to comply with the reporting requirements of Chapter 12L or material misrepresentation in proposer's Chapter 12L submissions shall be grounds for rejection of the proposal and/or termination of any subsequent Agreement reached on the basis of the proposal.

#### K. Reservations of Rights by the Authority

The issuance of this RFQ/P does not constitute an agreement by the Authority that any contract will actually be entered into by the Authority. The Authority expressly reserves the right at any time to:

1. Waive or correct any defect or informality in any response, proposal, or proposal procedure;
2. Reject any or all proposals;
3. Reissue a Request for Proposals;
4. Prior to submission deadline for proposals, modify all or any portion of the selection procedures, including deadlines for accepting responses, the specifications or requirements for any materials, equipment or services to be provided under this RFQ/P, or the requirements for contents or format of the proposals;

5. Procure any materials, equipment or services specified in this RFQ/P by any other means; or
6. Determine that no project will be pursued.

L. No Waiver

No waiver by the Authority of any provision of this RFQ/P shall be implied from any failure by the Authority to recognize or take action on account of any failure by a proposer to observe any provision of this RFQ/P.

## VII. CONTRACT REQUIREMENTS

### A. Chapter 12B and 12C: Nondiscrimination in Employment and Benefits

Chapter 12B and 12C of the S.F. Administrative Code are incorporated by reference as though fully set forth herein. Chapters 12B and 12C prohibit discrimination by City contractors in employment, the use of property, the provision of public accommodations and in the provision of benefits to employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees.

Please refer to Appendix B regarding the Affirmative Action Program mandated by Chapter 12B of the S.F. Administrative Code.

The successful proposer must agree to abide by the following standard contract provisions regarding Chapters 12B and 12C:

#### Nondiscrimination; Penalties

(a) **Contractor Shall Not Discriminate.** In the performance of this contract, Contractor agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any Authority employee working with, or applicant for employment with Contractor, in any of Contractor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Contractor.

(b) **Subcontracts.** Contractor shall incorporate by reference in all subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-12B.2(k) and 12C.3 of the San Francisco Administrative Code, and shall require all subcontractors to comply such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

(c) **Nondiscrimination in Benefits.** Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the City elsewhere in the United States, discriminate in the provision of benefits between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) **Condition to Contract.** As a condition to this Agreement, Contractor shall execute the "Nondiscrimination in Contracts and Benefits" form and secure the approval of the form by the San Francisco Human Rights Commission.

(e) **Incorporation of Administrative Code Provisions by Reference.** The provisions of Chapters 12B and 12C of the San Francisco Administrative Code are incorporated by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under Chapters 12B and 12C of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

#### **B. MBE, WBE and LBE Participation**

The Authority strongly encourages proposals from qualified MBEs, WBEs and LBEs. The following rating bonus will be in effect for the award of this project for any proposers who are certified by HRC as an MBE, WBE or LBE, or joint venture partners who are certified as an MBE or WBE at the time that the proposal is submitted. Certification applications may be obtained by calling HRC at 415-252-2500. The rating bonus applies at each phase of the selection process. The application of the rating bonus is as follows:

- a. A five percent (5%) bonus to:
  - A local business (LBE); or
  - A joint venture with a local MBE or local WBE participation that equals or exceeds 35 percent, but is under 40 percent; or
  - Where a joint venture is composed of only local businesses with no local MBE or WBE participation or where the local MBE or local WBE participation is less than 35 percent.
- b. A seven and one-half percent (7.5%) bonus to a joint venture with local MBE and WBE participation that equals or exceeds 40 percent.
- c. A ten percent (10%) bonus to:
  - A local MBE or local WBE; or
  - A joint venture between or among local MBEs or local WBEs.

#### **C. HRC Forms to be Submitted with Proposal**

- a. All proposals submitted must include Human Rights Commission (HRC) Form 1 (included in Appendix A) whether or not a rating discount is applied for.
- b. HRC Forms 3 and 4 (also included in Appendix A) are to be submitted with the proposal. If these forms are not returned with the proposal, the proposal may be determined to be non-responsive and rejected. HRC Schedule A must be submitted if applicable. [Obtain Schedule A from HRC.]

- c. Please submit only one copy of the above forms with your proposal. The forms should be submitted in a separate, sealed envelope addressed to:

Tina Pasco-Sanchez  
410 Avenue of Palms, Building 1, Treasure Island  
San Francisco, CA 94130

- d. If applying for a rating bonus as a joint venture: The MBE or WBE must be an active partner in the joint venture and perform work, manage the job and take financial risks in proportion to the required level of participation stated in the proposal, and must be responsible for a clearly defined portion of the work to be performed and share in the ownership, control, management responsibilities, risks, and profits of the joint venture. The portion of the MBE or WBE joint venture's work shall be set forth in detail separately from the work to be performed by the non-MBE or non-WBE joint venture partner. The MBE or WBE joint venture's portion of the contract must be assigned a commercially reasonable dollar value.

If you have any questions concerning the HRC Forms, you may contact Tina Pasco-Sanchez at 415.274.0697. The forms will be reviewed and approved by HRC prior to the interviews.

#### D. Standard Contract Provisions

The successful proposer will be required to enter into a contract substantially in the form of the Agreement for Professional Services, attached hereto as Appendix D. Failure to timely execute the contract, or to furnish any and all certificates, bonds or other materials required in the contract, shall be deemed an abandonment of a contract offer. The Authority, in its sole discretion, may select another firm and may proceed against the original selectee for damages.

In addition, the successful proposer will be required to execute the following City forms:

1. **San Francisco Business Tax Requirements.** The successful proposer must have a San Francisco Businesses Tax Certificate. Businesses not already having this certificate must apply for a certificate and pay the \$200 registration fee in order to be awarded this contract. (See Appendix E).
2. **Chapter 12B Declaration.** The successful proposer must submit the "Chapter 12B: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) contained in Appendix B and have the form approved by HRC prior to being awarded the contract. Two other forms are included in Appendix B: "Reasonable Measures Affidavit" (form HRC-12B-102); and "Substantial Compliance Authorization Form" (form HRC-12B-103). Proposers should execute and submit these forms if, in accordance with the forms' instructions, it is appropriate to do so.
3. **Tropical Hardwoods/Virgin Redwood Ban.** Any proposal submitted in response to this Request for Proposals which calls for the use of any tropical hardwood or tropical hardwood product, virgin redwood or virgin redwood product, as defined in San Francisco Administrative Code Chapter 12I, shall be deemed non-responsive.



1 [Authorization to Approve URS Contract]

2 APPROVING A CONTRACT WITH URS CORPORATION FOR \$300,000 TO PREPARE A  
3 PROGRAMMATIC ENVIRONMENTAL IMPACT REPORT FOR FORMER NAVAL STATION  
4 TREASURE ISLAND.

5 WHEREAS, On May 2, 1997, the Board of Supervisors (the "Board") passed  
6 Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a  
7 nonprofit public benefit corporation known as the Treasure Island Development Authority (the  
8 "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction,  
9 rehabilitation, reuse and conversion of former Naval Station Treasure Island (the "Base") for  
10 the public interest, convenience, welfare and common benefit of the inhabitants of the City  
11 and County of San Francisco; and,

12 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended  
13 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter  
14 1333 of the Statutes of 1968 (the "Act"), the California legislature (i) designated the Authority  
15 as a redevelopment agency under California redevelopment law with authority over the Base  
16 upon approval of the City's Board of Supervisors, and, (ii) with respect to those portions of the  
17 Base which are subject to the Tidelands Trust, vested in the Authority the authority to  
18 administer the public trust for commerce, navigation and fisheries as to such property; and,

19 WHEREAS, The conveyance and redevelopment of the Base requires environmental  
20 review under the National Environmental Protection Act (NEPA) resulting in an Environmental  
21 Impact Statement (EIS) and review under the California Environmental Quality Act (CEQA)  
22 resulting in an Environmental Impact Report (EIR); and,

23 WHEREAS, The Authority, working with the City's Planning Department Staff, and the  
24 United States Navy have been working together to produce a joint EIR/EIS for the disposal  
25 and reuse of the Base; and,

1 WHEREAS, Staff have reviewed multiple drafts of the joint document and expressed  
2 concern to the Navy about the adequacy of the document from a CEQA perspective; and

3 WHEREAS, The Navy is unwilling to make changes to the joint document necessary  
4 for CEQA compliance; and,

5 WHEREAS, A flawed document may adversely affect the Authority's ability to  
6 complete a timely conveyance of the Base and redevelopment of the property; and

7 WHEREAS, The Authority, in conjunction with City Staff has determined that it is in the  
8 Authority's best interest to complete an programmatic EIR independent of the Navy; and

9 WHEREAS, On June 14, 2000, the Authority authorized the issuance of a Request for  
10 Proposals (RFP) for environmental consulting services related to the preparation of a  
11 programmatic EIR; and,

12 WHEREAS, Authority staff prepared and issued said RFP to qualified environmental  
13 consultants on December 21, 2000; and

14 WHEREAS, On February 9, 2001, the Authority received three responses to the RFP;  
15 and

16 WHEREAS, On February 22, 2001 a Selection Committee comprised of staff from the  
17 Authority, the City's Planning Department, and the City Attorney's Office evaluated the three  
18 responses to the RFP; and

19 WHEREAS, The URS Corporation was unanimously approved by the Selection  
20 Committee as the most qualified respondent to conduct the scope of work set forth in the  
21 RFP; now, therefore, be it

22 RESOLVED, That the Authority hereby authorizes the Executive Director to execute a  
23 contract with the URS Corporation to prepare a programmatic environmental impact report for  
24 the Base, for an amount not to exceed (\$300,000).

CERTIFICATE OF SECRETARY

*I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on March 14, 2001.*

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John Elberling, Secretary

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Proposed Fee and Scope of Work

## 6.0 Fee Proposal

### 6a. Fee by Task

This section presents the total, not-to-exceed fee by task, as requested in the RFP. We are eager to discuss this Fee Proposal with TIDA/CCSF in order to arrive at the greatest possible level of confidence in the estimate and in our assumptions, which are identified in detail in the Fee Proposal Assumptions, included at the end of this section. We have carefully identified each component of the work, and have provided our best estimate of realistic costs. We have been mindful of the existing budget, but have not "force-fit" the level of effort.

URS has based this fee proposal on the following:

- an assumed level of effort by technical specialists (which depends on peer review of documents and the basic assumption that the Navy document will need to be "tweaked" and not rewritten)
- no new modeling or field work will be required
- the level of effort for responding to comments will depend on the quantity and complexity of the comments on the DEIR (the responses to comments budget must be reviewed by TIDA/CCSF when the comments have been received and the level of effort can be properly identified), and
- assumptions regarding the size of the documents (total pages, figures, color, etc.) and costs of mailing.

It is recognized that the scope of work and thus, the level of effort, is not completely known at this time. We will work with TIDA and CCSF to restrict the scope of work to the assumptions outlined, but would expect that you would be responsive to reasonable changes in scope, should they occur.

#### Total Fee by Task

Task 1 – Coordination and Consultation	\$37,697
Task 2 – Review, Update and Prepare Draft EIR	97,328
Task 3 – Circulate Draft EIR/Public Hearing	27,433
Task 4 – Response to Comments	55,573
Task 5 – Final EIR Preparation	25,521
Total Fee	\$243,552

Printing and mailing costs make up a significant portion of the costs shown above (over \$37,000). We used a reliable and cost-competitive outside vendor to quote document reproduction costs, and the U.S. mail bulk rate to estimate mailing costs. We assumed separate mailings for each document. These costs included in our estimate are summarized as follows, for your information:

Printing/Mailing by Task	# Copies	Printing	U.S. Mail
Task 3 – DEIR, including Appendix	400	\$18,254	\$3,020
Task 4 – Comments and Responses	400	6,933	\$2,060
Task 5 – FEIR, no Appendix	200	<u>6,497</u>	<u>\$1,030</u>
Totals		\$31,684	\$6,110

## 6.0 Fee Proposal

### 6b. Hourly Rates for Team Members

Following are hourly rates for team members. These rates are firm through June 2002. Should the project extend beyond that date, they will be escalated by 4 percent.

#### URS Corporation

Denise Heick	\$150
Ian Austin	\$150
Robert Green	\$135
Demetrios Koutsoftas	\$150
Bill Martin	\$104
Katie McKinstry	\$ 87
John Lague	\$150
Stephen Leach	\$120
Diane Mims	\$143
Sally Morgan	\$101
Thomas Sweet	\$133
Staff Scientist/Engineer	\$ 95
Staff Environmental Analyst	\$ 85
Technical Editor	\$ 65
Graphics	\$ 60
Administrative, Clerical	\$ 60
Word Processing	\$ 55

#### Mara Feeney & Associates

Mara Feeney	\$135
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#### The Duffey Company

Rebecca Kohlstrand	\$116
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#### JRP Historical, Inc.

Steve Mikesell	\$ 73
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Stephen Sheppard	\$100
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### 6c. Strategic Alternative Approach and Optional Services

Our "first-cut" cost estimate for the strategic alternative approach discussed on page 2-2 is presented below. If TIDA/CCSF want to consider this approach, we should discuss the assumptions in some detail. The basic approach to this cost estimate includes (1) eliminating "Tier 2" study elements, (2) eliminating the Technical Memorandum task, and (3) assuming that a lower level of effort would be required to respond to comments.

#### Total Fee by Task for the Strategic Alternative Approach

Task 1 - Coordination and Consultation	\$29,451
Task 2 - Review, Update and Prepare Draft EIR	75,211
Task 3 - Circulate Draft EIR/Public Hearing	27,433
Task 4 - Response to Comments	50,833
Task 5 - Final EIR Preparation	25,521
Total Fee	\$208,449

## 6.0 Fee Proposal

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### Optional Tasks

Two Optional Tasks are identified on the Schedule. Our cost estimate for these services is presented below. In addition, we would be pleased to offer the assistance of Mara Feeney in coordinating or assisting in public involvement activities such as community meetings regarding the DEIR.

Prepare electronic version of ADEIS/R	\$2,968
Mitigation Monitoring and Reporting Program	\$7,702
Public Involvement Coordination or Assistance	As Required

## FEE PROPOSAL ASSUMPTIONS

TASKS	DESCRIPTION	ASSUMPTIONS <sup>1</sup>	COST ESTIMATE AND STAFF PARTICIPATION
Task 1	Coordination and Consultation		Task 1: \$37,697
1.1	Project Initiation Meeting Meeting #1: review proposed scope of work and schedule, receive relevant data, identify additional data needed, review significance criteria, finalize revised projections methodology, prepare for team kickoff meeting, set detailed schedule for issue area meetings.	<ul style="list-style-type: none"> <li>Duration: 2 hrs</li> <li>Products: <ul style="list-style-type: none"> <li>final scope and schedule</li> <li>list of relevant data/plan for delivery</li> <li>list of issues re significance criteria</li> <li>description of methodology for revised projections</li> <li>draft agenda for kickoff meeting</li> <li>draft schedule of issue area mtgs.</li> </ul> </li> </ul>	Subtask 1.1: \$1,300  Heick, McKinstry Feeney (partial)
1.2	Team Kickoff Meeting Mtg. #2: Compile and distribute information to team, kickoff meeting on TI (introductions, review project description components, general work scope and schedule, focused issue area summary, communications protocols), site tour.	<ul style="list-style-type: none"> <li>Duration: 3 hours</li> <li>Clarifies team questions re project</li> <li>Clarifies TIDA/CCSF direction</li> <li>Focuses team on overall effort</li> <li>Clarifies communications protocol</li> <li>Acquaints TIDA/CCSF with team members</li> <li>Acquaints team with site</li> </ul>	Subtask 1.2: \$10,684  Team
1.3	Issue Area Meetings Meetings #3 - 6. 1 - Projections, Transportation, Air 2 - Seismic/Dike Stability 3 - Dredging, Hazardous Materials/Waste, Biology 4 - Public Utilities	<ul style="list-style-type: none"> <li>Four two-hour meetings assumed (action composition can vary, can be serial on same day)</li> <li>Finalize approach to issues</li> </ul>	Subtask 1.3: \$5,682  Heick, McKinstry, Tier 1 (not all individuals at all meetings)
1.4	Coordination with TIDA, CCSF Level of effort for management coordination and project management.	<ul style="list-style-type: none"> <li>Assumes project duration of 13 months. Assumes average of: Heick - 6 hrs/mo McKinstry - 3 hrs/mo Clerical - 4.5 hrs/mo</li> </ul>	Subtask 1.4: \$19,944  Heick, McKinstry, clerical

<sup>1</sup> Assumes TIDA and/or CCSF, plus Heick and/or McKinstry, at all numbered meetings, and participation in tasks as required.

<sup>2</sup> Tier 1 includes M. Feeney (projections); R. Kohlstrand (transportation and waterfront development); J. Lague (air quality); D. Koutsoftas (seismic stability); W. Martin (dredging and contaminated sediments); T. Sweet (public utilities); and D. Mims (hazardous materials and waste). Tier 2 includes all other resource specialists.



## 6.0 Fee Proposal

TASKS	DESCRIPTION	ASSUMPTIONS <sup>1</sup>	COST ESTIMATE AND STAFF PARTICIPATION <sup>2</sup>
Task 2	Review, Update and Prepare Draft EIR		Task 2: 97,328
2.1	Finalize Development Alternatives with TIDA/CCSF	<ul style="list-style-type: none"> <li>Assumes conference call with TIDA/CCSF</li> <li>URS to draft revised alternative language</li> <li>TIDA/CCSF to review</li> <li>URS to finalize</li> </ul>	Subtask 2.1: \$1,041 Heick, McKinstry
2.2	Team Review of Existing Data Review of revised Development Alternatives, ADEIS/R, Relevant Supporting Technical Reports	<ul style="list-style-type: none"> <li>TIDA to provide copies of ADEIS/EIR, Technical Reports, Reuse Plan as required for team</li> <li>Tier 1 – assumes 12 hrs each</li> <li>Tier 2 – assumes 6 hrs each</li> </ul>	Subtask 2.2: \$17,752 Tier 1, Tier 2, Heick
2.3	Prepare Task Plans For each EIR section: Identify issues, questions, proposed modifications to technical analysis or EIR, including analysis of additional project alternative information (bullet format).	<ul style="list-style-type: none"> <li>Tier 1 – assumes 2-4 hrs each</li> <li>Tier 2 – assumes 1-2 hrs each</li> <li>Heick – assumes 12 hrs</li> <li>TIDA/CCSF to review prior to finalizing task plans</li> </ul>	Subtask 2.3: \$6,649 Tier 1, Tier 2, Heick, clerical
2.4	Execute Task Plans, Draft Technical Memoranda Forms the basis for changes in Navy's document, provides administrative record. Provides TIDA/CCSF with substance of changes, for review prior to document edits.	<ul style="list-style-type: none"> <li>Tier 1 – assumes 24-40 hrs each</li> <li>Tier 2 – assumes 8-12 hrs each</li> <li>Heick – assumes 24 hrs</li> <li>McKinstry – assumes 12 hrs</li> <li>Clerical – assumes 16 hrs</li> </ul>	Subtask 2.4 \$40,625 Tier 1, Tier 2, Heick, McKinstry, clerical
2.5	Finalize Technical Memoranda Team to finalize Technical Memoranda based on TIDA/CCSF comments.	<ul style="list-style-type: none"> <li>URS to review TIDA/CCSF comments on Draft Technical Memoranda</li> <li>Finalize Technical Memoranda. Assumes that results do not identify additional technical issues.</li> </ul>	Subtask 2.5: \$2,410 Heick, McKinstry, clerical. Resource specialist time, if required, included in Task 2.4.
2.6	Prepare and Submit 1 <sup>st</sup> Administrative DEIR Red-line/strike-out version of Navy's document, based on final Technical Memoranda	<ul style="list-style-type: none"> <li>Assumes useable electronic version of Navy's document, including figures and photos, are obtained.</li> <li>Assumes 10 copies to TIDA/CCSF, single sided, only new Appendix info</li> <li>Assumes TIDA/CCSF will supply updated info for Distribution List</li> <li>Assumes 16 hrs (unassigned) for technical team support, if required</li> </ul>	Subtask 2.6: \$16,657 Heick, McKinstry, technical specialists (assumed level of effort), clerical

## 6.0 Fee Proposal

TASKS	DESCRIPTION	ASSUMPTIONS <sup>1</sup>	COST ESTIMATE AND STAFF PARTICIPATION
2.7	Prepare and Submit 2 <sup>nd</sup> Administrative DEIR Mtg. #8 to review internal review comments on 1 <sup>st</sup> Administrative DEIR. Revise document and submit 2 <sup>nd</sup> Administrative DEIR	<ul style="list-style-type: none"> <li>Meeting duration 2 hrs</li> <li>Red-line/strike-out of 1<sup>st</sup> Admin DEIR</li> <li>Assumes 10 copies to TIDA/CCSF, single sided, only revised Appendix info</li> <li>Assumes 8 hrs (unassigned) for technical team support, if required</li> </ul>	Subtask 2.7: \$8,850  Heick, McKinstry, technical specialists (assumed level of effort), clerical
2.8	Prepare and Submit Checkprint DEIR Respond to TIDA/CCSF review comments on 2nd Administrative DEIR. Finalize text and provide checkprint DEIR.	<ul style="list-style-type: none"> <li>Could be cheaper if only pages with changes are submitted.</li> <li>Assumes 3 copies to TIDA/CCSF</li> <li>Assumes 4 hrs (unassigned) for technical team support, if required</li> </ul>	Subtask 2.8: \$3,343  Heick, McKinstry, technical specialists (assumed level of effort), clerical
Task 3	Circulate Draft EIR/Public Hearing		Task 3: \$27,433
3.1	Prepare NOC, Copy and Distribute DEIR Print and distribute 400 copies	<ul style="list-style-type: none"> <li>Assumes no substantive changes to document</li> <li>DEIR: assumes 600 8-1/2 x 11 pgs, all B&amp;W, plus 3 color pages</li> <li>Appendix: assumes 300 8-1/2 x 11 pgs, all B&amp;W except 5 color pages (Note: haven't seen Appendix so can't be sure of quantity or color)</li> <li>Spiral bound</li> <li>Mailing costs assumes ea separately mailed. Could be cheaper if a lot of copies are sent to one location.</li> </ul>	Subtask 3.1: \$24,989  Heick, McKinstry, clerical
3.2	Public Hearing Prepare for and attend public hearing	<ul style="list-style-type: none"> <li>Assumes no technical specialists required</li> <li>Assumes one hearing, 4 hours</li> </ul>	Subtask 3.2: \$970  Heick, McKinstry
3.3	Hearing Transcript	<ul style="list-style-type: none"> <li>Assumes one hearing, 4 hours. Takes 10 working days for transcription.</li> </ul>	Subtask 3.3: \$1,474  Subcontract
Task 4	Response to Comments		Task 4: \$55,573
4.1	Review Comments and Scope of Responses Consultant review/categorize comments. Initial markup and identification of issues sent to CCSF and TIDA. Mtg #9 Confirm approach to responses, I.D. add'l work if required, review assignments, schedule and costs with TIDA/CCSF	<ul style="list-style-type: none"> <li>Assumed level of effort. To be reviewed once quantity of comments are known.</li> <li>Heick - assumes 20 hrs</li> <li>McKinstry - assumes 8 hrs</li> </ul>	Subtask 4.1: \$3,800  Heick, McKinstry, clerical

## 6.0 Fee Proposal

TASKS	DESCRIPTION	ASSUMPTIONS <sup>1</sup>	COST ESTIMATE AND STAFF PARTICIPATION <sup>2</sup>
4.2	<p>Prepare and Submit 1<sup>st</sup> Draft Comments and Responses Document</p> <p>Prepare comment summaries by issue area, draft responses, submit 1<sup>st</sup> Draft Comments and Responses document.</p>	<ul style="list-style-type: none"> <li>Assumed level of effort. To be reviewed at completion of Subtask 4.1</li> <li>No draft text changes to Draft EIR until Subtask 4.3.</li> <li>Assumes 60 hrs (unassigned) for technical team support, if required</li> <li>Heick – assumes 60 hrs</li> <li>McKinstry – assumes 20 hrs</li> <li>Editor – assumes 20 hrs</li> <li>Clerical – assumes 32 hrs</li> </ul>	<p>Subtask 4.2: \$24,314</p> <p>Heick, McKinstry, technical specialists (assumed level of effort), editor, clerical</p>
4.3	<p>Prepare and Submit 2<sup>nd</sup> Draft Comments and Responses Document</p> <p>Mtg. #10 to review internal review comments on 1<sup>st</sup> Draft Responses to Comments document. Revise document and submit 2<sup>nd</sup> Admin Responses to Comments.</p>	<ul style="list-style-type: none"> <li>Meeting duration 2 hrs</li> <li>Red-line/strike-out of 1<sup>st</sup> Draft Comments and Responses document</li> <li>Assumes 10 copies to TIDA/CCSF, single sided, only revised Appendix info</li> <li>Assumed level of effort. To be reviewed at completion of Subtask 4.1</li> <li>Heick – assumes 32 hrs</li> <li>McKinstry – assumes 24 hrs</li> <li>Clerical – assumes 16 hrs</li> <li>Assumes 16 hrs (unassigned) for technical team support, if required</li> </ul>	<p>Subtask 4.3: \$11,560</p> <p>Heick, McKinstry, technical specialists (assumed level of effort), clerical</p>
4.4	<p>Prepare and Submit Checkprint Comments and Responses Document</p> <p>Respond to TIDA and CCSF comments on 2<sup>nd</sup> Draft Responses to Comments and Responses, finalize text and provide Checkprint Comments and Responses</p>	<ul style="list-style-type: none"> <li>Could be cheaper if only pages with changes are submitted.</li> <li>Assumes 3 copies to TIDA/CCSF</li> <li>Assumed level of effort. To be reviewed at completion of Subtask 4.1</li> <li>Assumes 8 hrs (unassigned) for technical team support, if required</li> <li>Heick – assumes 4 hrs</li> <li>McKinstry – assumes 16 hrs</li> <li>Clerical – assumes 16 hours</li> </ul>	<p>Subtask 4.4: \$4,845</p> <p>Heick, McKinstry, technical specialists (assumed level of effort), clerical</p>
4.5	<p>Copy and Distribute Final Comments and Responses Document</p> <p>Print and distribute 400 copies</p>	<ul style="list-style-type: none"> <li>Assumes no substantive changes to checkprint document</li> <li>Assumes 400 8-1/2 x 11 B&amp;W pages per copy</li> <li>Spiral bound</li> <li>Mailing costs assumes each separately mailed. Could be cheaper if a lot of copies are sent to one location.</li> </ul>	<p>Subtask 4.5: \$11,054</p> <p>McKinstry, clerical</p>

## 6.0 Fee Proposal

TASKS	DESCRIPTION	ASSUMPTIONS <sup>1</sup>	COST ESTIM AND STAFF PARTICIPATI
<b>Task 5</b>	<b>Final EIR Preparation</b>		<b>Task 5: \$25,521</b>
5.1	Submit 1 <sup>st</sup> Admin FEIR Prepare and submit 1 <sup>st</sup> Admin FEIR	<ul style="list-style-type: none"> <li>Red-line/strike-out of DEIR</li> <li>Assumes 3 copies to TIDA/CCSF, single sided</li> <li>DEIR Appendix not included</li> <li>Heick – assumes 16 hrs</li> <li>McKinstry – assumes 40 hrs</li> <li>Clerical – assumes 20 hrs</li> </ul>	Subtask 5.1: \$7, Heick, McKinstry clerical
5.2	Submit 2 <sup>nd</sup> Admin FEIR Respond to TIDA and CCSF comments on 1 <sup>st</sup> Admin FEIR, Submit 2 <sup>nd</sup> Admin FEIR	<ul style="list-style-type: none"> <li>Red-line/strike-out of 1<sup>st</sup> Admin FEIR</li> <li>Assumes 3 copies to TIDA/CCSF, single sided, only revised Appendix info</li> <li>Heick – assumes 8 hrs</li> <li>McKinstry assumes 16 hrs</li> <li>Clerical – assumes 10</li> </ul>	Subtask 5.2: \$6, Heick, McKinstry clerical
5.3	Prepare and Submit Checkprint FEIR Respond to TIDA and CCSF comments on 2 <sup>nd</sup> Admin FEIR, finalize text and provide Checkprint FEIR	<ul style="list-style-type: none"> <li>Assumes 3 copies to TIDA/CCSF</li> <li>Heick – assumes 4 hrs</li> <li>McKinstry – assumes 8 hrs</li> <li>Clerical – assumes 8 hours</li> </ul>	Subtask 5.3: \$2,0 Heick, McKinstry clerical
5.4	Copy and Distribute FEIR Print and distribute 200 copies	<ul style="list-style-type: none"> <li>Note assumption re number of copies: assumes less copies needed than for other documents, based on Hunters Point project</li> <li>Assumes no substantive changes to document</li> <li>Assumes 650 8-1/2 x 11 B&amp;W pages</li> <li>Assumes 3 8½ x 11 color pages</li> <li>Assumes no new copies of Comments and Responses document or DEIR Appendix will be required.</li> <li>Mailing costs assumes ea separately mailed. Could be cheaper if a lot of copies are sent to one location.</li> </ul>	Subtask 5.4: \$9,7 McKinstry, clerical

## 6.0 Fee Proposal

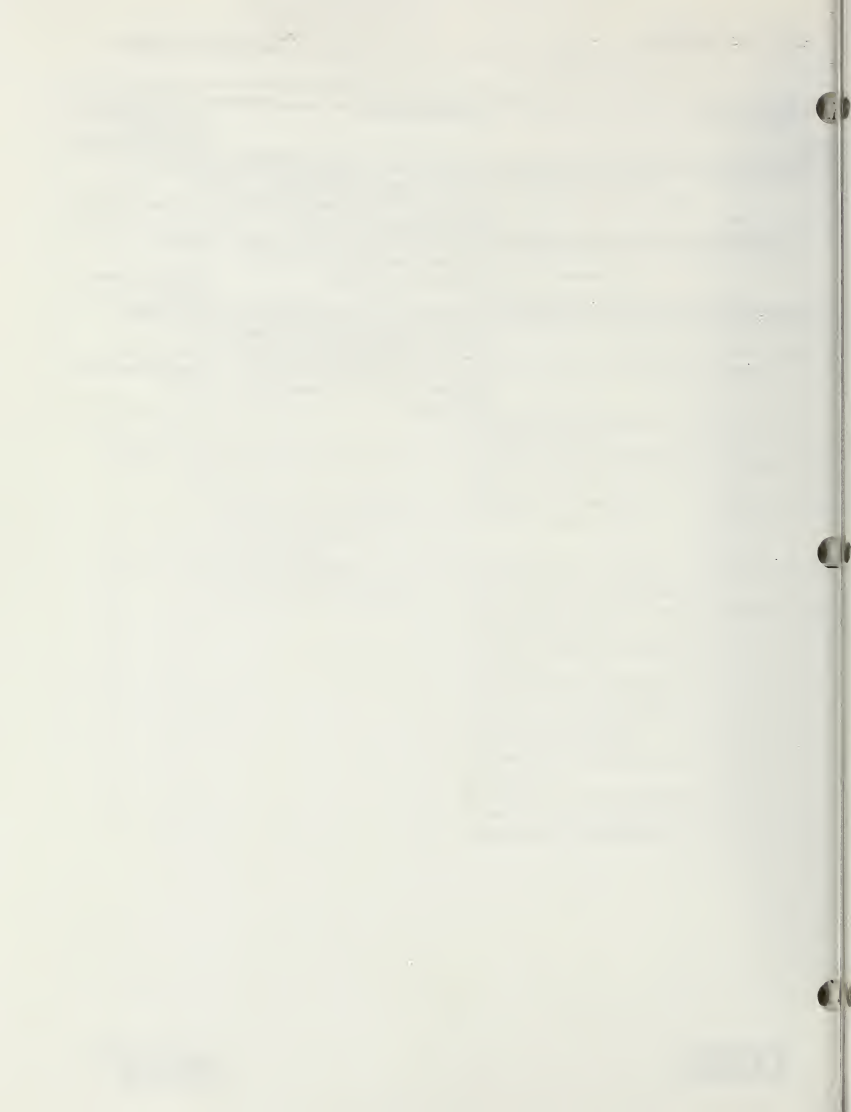
Optional Tasks		
DESCRIPTION	ASSUMPTIONS <sup>1</sup>	COST ESTIMATE AND STAFF PARTICIPATION <sup>2</sup>
Prepare electronic version of Navy's document	Scan and clean-up Navy's document, if suitable electronic version is not provided. Does not assumes preparing electronic versions of figures.	\$2,968 McKinstry, clerical
Mitigation Monitoring and Reporting Program	Draft MMRP based on Hunters Point format, 2 rounds of review, provide electronic final MMRP	\$7,702 Heick, McKinstry, clerical
Public Coordination Involvement or Assistance	Mara Feeney is an expert in public participation planning and facilitating public meetings. Should TIDA/CCSF desire these services, we would be pleased to discuss a scope and budget with you	As Required Feeney, staff support from URS

## 6.0 Fee Proposal

TASKS	DESCRIPTION	ASSUMPTIONS <sup>1</sup>	COST ESTIMATE AND STAFF PARTICIPATION
<b>Task 5</b>	<b>Final EIR Preparation</b>		<b>Task 5: \$25,521</b>
5.1	Submit 1 <sup>st</sup> Admin FEIR Prepare and submit 1 <sup>st</sup> Admin FEIR	<ul style="list-style-type: none"> <li>• Red-line/strike-out of DEIR</li> <li>• Assumes 3 copies to TIDA/CCSF, single sided</li> <li>• DEIR Appendix not included</li> <li>• Heick – assumes 16 hrs</li> <li>• McKinstry – assumes 40 hrs</li> <li>• Clerical – assumes 20 hrs</li> </ul>	Subtask 5.1: \$7,500  Heick, McKinstry clerical
5.2	Submit 2 <sup>nd</sup> Admin FEIR Respond to TIDA and CCSF comments on 1 <sup>st</sup> Admin FEIR, Submit 2 <sup>nd</sup> Admin FEIR	<ul style="list-style-type: none"> <li>• Red-line/strike-out of 1<sup>st</sup> Admin FEIR</li> <li>• Assumes 3 copies to TIDA/CCSF, single sided, only revised Appendix info</li> <li>• Heick – assumes 8 hrs</li> <li>• McKinstry assumes 16 hrs</li> <li>• Clerical – assumes 10</li> </ul>	Subtask 5.2: \$6,140  Heick, McKinstry, clerical
5.3	Prepare and Submit Checkprint FEIR Respond to TIDA and CCSF comments on 2 <sup>nd</sup> Admin FEIR, finalize text and provide Checkprint FEIR	<ul style="list-style-type: none"> <li>• Assumes 3 copies to TIDA/CCSF</li> <li>• Heick – assumes 4 hrs</li> <li>• McKinstry – assumes 8 hrs</li> <li>• Clerical – assumes 8 hours</li> </ul>	Subtask 5.3: \$2,070  Heick, McKinstry, clerical
5.4	Copy and Distribute FEIR Print and distribute 200 copies	<ul style="list-style-type: none"> <li>• Note assumption re number of copies: assumes less copies needed than for other documents, based on Hunters Point project</li> <li>• Assumes no substantive changes to document</li> <li>• Assumes 650 8-1/2 x 11 B&amp;W pages</li> <li>• Assumes 3 8½ x 11 color pages</li> <li>• Assumes no new copies of Comments and Responses document or DEIR Appendix will be required.</li> <li>• Mailing costs assumes ea separately mailed. Could be cheaper if a lot of copies are sent to one location.</li> </ul>	Subtask 5.4: \$9,750  McKinstry, clerical

## 6.0 Fee Proposal

Optional Tasks		
DESCRIPTION	ASSUMPTIONS <sup>1</sup>	COST ESTIMATE AND STAFF PARTICIPATION <sup>2</sup>
Prepare electronic version of Navy's document	Scan and clean-up Navy's document, if suitable electronic version is not provided. Does not assume preparing electronic versions of figures.	\$2,968 McKinstry, clerical
Mitigation Monitoring and Reporting Program	Draft MMRP based on Hunters Point format, 2 rounds of review, provide electronic final MMRP	\$7,702 Heick, McKinstry, clerical
Public Coordination Involvement or Assistance	Mara Feeney is an expert in public participation planning and facilitating public meetings. Should TIDA/CCSF desire these services, we would be pleased to discuss a scope and budget with you	As Required Feeney, staff support from URS









**AGENDA ITEM**  
**Treasure Island Development Authority**  
*City and County of San Francisco*

**Subject:** Accepting five Covarrubias murals from the Port of San Francisco as a gift

**Agenda Item:** 8      **Contact person/phone:** Joan Rummelsburg 274-0660

**Meeting date:** March 14, 2001

**SUMMARY OF PROPOSED ACTION:** Approval by TIDA of the resolution enables the Authority to accept the murals, store them in Building 449 on Treasure Island, authorize and seek funds for their conservation and reintroduce them into an exhibition space on Treasure Island.

**BACKGROUND AND DESCRIPTION OF PROPOSED ACTION:**

The five extant "Pageant of the Pacific" murals by artist and anthropologist Miguel Covarrubias, were originally commissioned for and displayed at the Pacific House at the Golden Gate International Exposition, the 1939-40 Treasure Island World's Fair. They are currently displayed at the World Trade Center in the Ferry Building but must be removed by the end of March, 2001.

Artist and anthropologist Miguel Covarrubias was a famed illustrator for *Vanity Fair* and the *New Yorker* in the 1920s and later. The director of the Pacific House at the Golden Gate International Exposition (1939-40 Treasure Island World's Fair) asked Covarrubias to create mural maps for the building's interior. Pacific House was to be the cultural center of the World Fair's "Pageant of the Pacific". Covarrubias researched and painted the "Pageant of the Pacific" Murals that have been displayed inside the entrance and alongside the ramps to the second and third floors in the World Trade Center portion of the Ferry Building since the Center's development in the late 1950s. The murals were loaned to New York's Museum of National History after the Fair, and five of the six were later returned to the Bay Area and installed in the World Trade Center. The sixth "Art and Artifacts" mural was never returned, and its fate is unknown.

The World Trade Center and the Ferry Building are currently being remodeled and the walls and spaces where these murals have been displayed since the 1950s will be eliminated. This situation presents TIDA with a unique opportunity to have the murals returned to Treasure Island. The San Francisco Arts Commission staff has been helpful with advice and assistance in how to relocate the murals, and by providing information about their provenance and appropriate documentation for their display at Treasure Island.

The Ferry Building developer has agreed to fund the murals' transportation to Treasure Island by Atthowe Fine Arts Services, a third-generation business dedicated to the handling of fine art and fragile objects. The transfer of these murals to the Treasure Island Development Authority is on the Port Commission's March 13, 2001 agenda.

The San Francisco International Airport, which stores other artifacts from Treasure Island and the City of San Francisco in Building 449 has agreed to store the murals until appropriate display areas are created for their future viewing. They will not charge for the storage.

Before they can be displayed, tasks related to the conservation of the murals must be completed. Staff anticipates that the San Francisco Arts Commission (SFAC) will agree to help obtain funding and advise on exhibition and conservation issues. The developer of the Ferry Building has funded work by an arts conservator and mural expert, Anne Rosenthal, to document the existing condition of the murals and to provide general recommendations for their future restoration. Ms. Rosenthal recently submitted her report to the Debra Lehane, Project Director for the San Francisco Art Commission staff detailing the work needed and the approximate costs for restoration. These range from \$110,000 to \$170,000. Arts Commission staff has committed to seek grants for the work and to assist in garnering support in the arts and cultural communities for the restoration project.

An MOU between the (SFAC) and TIDA memorializing such an arrangement will most likely be placed on the Authority's April agenda.

Public exhibition of the murals will occur as soon as a suitable place has been found for the murals on Treasure Island and funds for conservation, uncrating and remounting are obtained.

#### **ATTACHMENTS:**

1. Background material on Covarrubias
2. Letter to Debra Lehane, San Francisco Arts Commission, describing restoration work and cost

FILE NO. \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

[Acceptance of Gift Related to Storing, Preserving and Exhibiting Historical Murals]

**Resolution Authorizing the Acceptance of Covarrubias Murals from the Port of San Francisco**

WHEREAS, On May 2, 1997, the Board of Supervisors of the City and County of San Francisco (the "Board") passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office (the "Project") to establish a non-profit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse, and conversion of the Base for the public interest, convenience, welfare, and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health & Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the Board, and (ii) with respect to those portions of the Base which are subject to the Tidelands Trust, vested in the Authority the authority to administer the public trust for commerce, navigation, and fisheries as to such property; and

WHEREAS, The Board approved the designation of the Authority as a redevelopment agency for Treasure Island in 1997; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, the California Legislature (i) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the City's Board of Supervisors, and, (ii) with respect to those portions of the Base which are subject to the Tidelands Trust, vested in the Authority the authority to administer the public trust for commerce, navigation and fisheries as to such property; and



WHEREAS, The Tidelands Trust prohibits the sale of trust property into private ownership, generally requires that Tidelands Trust property be accessible to the public and encourages public-oriented uses of trust property that, among other things, attract people to the waterfront, promote public recreation, protect habitat and preserve open space; and

WHEREAS, on April 15, 1998, the Authority adopted a resolution regarding the acceptance of gifts and other charitable contributions to the Authority in accordance with Government Code section 18944 which requires that (I) all Gifts be used solely for the official business of the Authority and, (ii) that the Authority, in its sole discretion, shall determine the specific official or officials who shall use the Gift, provided, however, that a donor may identify a specific purpose for the Authority's use of the Gift, so long as the donor does not designate the specific official or officials who may use the Gift; and

WHEREAS, With the remodeling of the Ferry Building, the Covarrubias murals, which were originally created for the Pan Pacific exposition of 1939 on Treasure Island, must be moved to facilitate the building's reconstruction; and

WHEREAS, at its regular meeting of March 13, 2001, the Port of San Francisco approved donating the murals to the Treasure Island Development Authority; now therefore be it

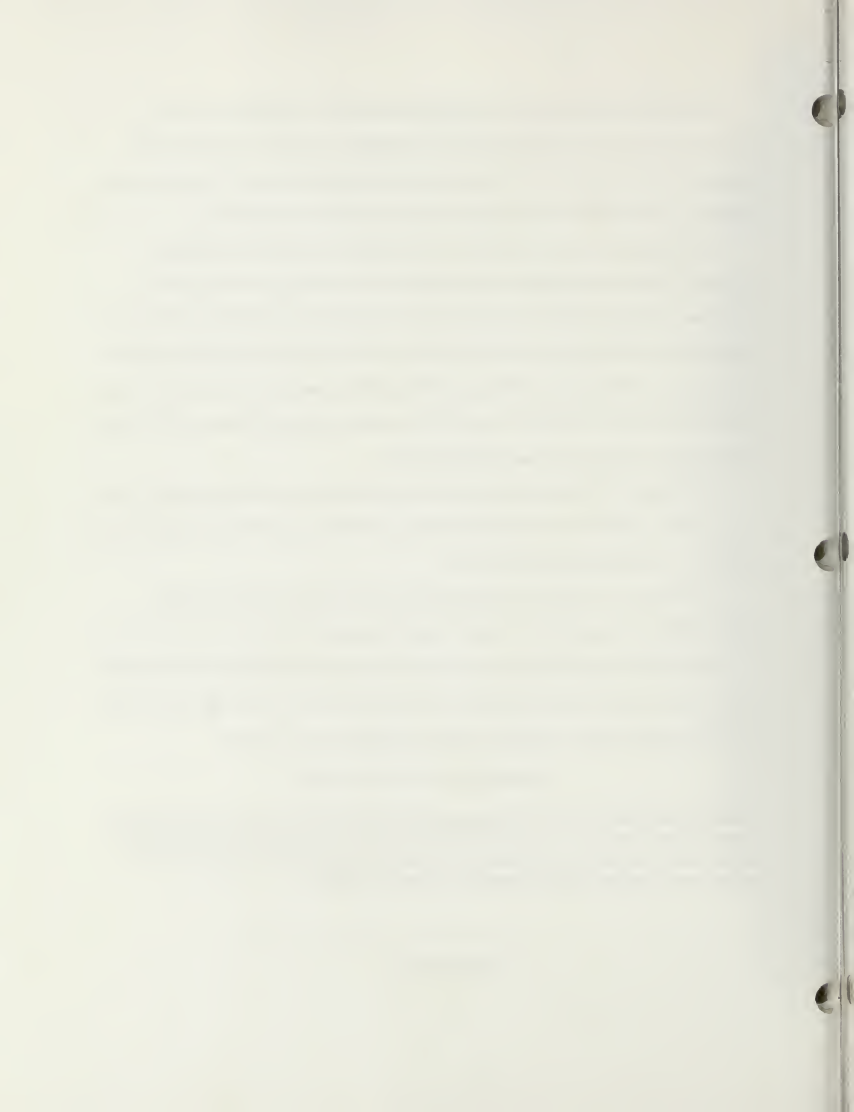
RESOLVED, That the Authority hereby directs the Executive Director to accept the gift of the murals from the Port and to store the murals until they may be reintroduced into Building 1 or another suitable space at such time a space is available for such exhibition.

#### CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above resolution was duly adopted and approved by the Board of Directors of the authority at a properly noticed meeting on March 14, 2001.

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John Elberling





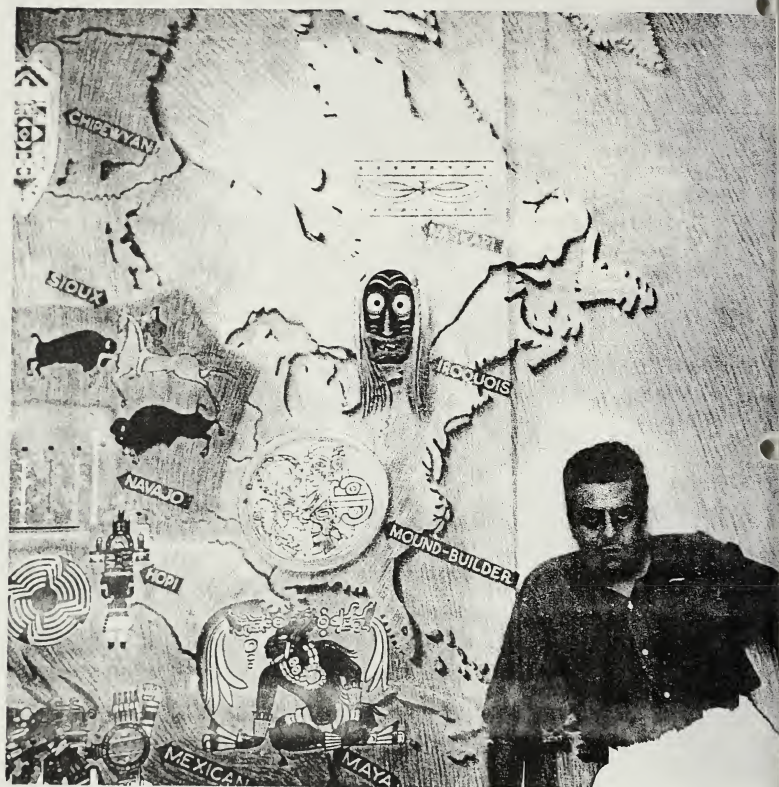




# COVARRUBIAS

Miguel Covarrubias and His Pictorially Illuminated Maps





Miguel Covarrubias posing in front of the North and Central American section of *The Art Styles of the Pacific Basin* mural map.



## Miguel Covarrubias and his Pictorially Illuminated Maps.

In 1938, the name of Miguel Covarrubias was brought to the attention of a prominent group of West Coast citizens involved in planning the Golden Gate International Exposition to be held the following year on Treasure Island in the bay of San Francisco.

Miguel Covarrubias was approached by Philip Youtz, the director of the Golden Gate International Exposition, and asked if he would be interested in working for the World's Fair. With that in mind, Covarrubias agreed to travel to Washington, D.C. to meet with Mrs. Charles Henderson; his friends, Frederick Field Vanderbilt (an Asian specialist) and René d'Harnoncourt (future director of the Museum of Modern Art in New York City), as well as, other committee members to discuss plans for the fair.

An initial meeting was held at the Mayflower Hotel where the *Pacific House* project was presented. At the same time, the theme for the exposition, "The Pageant of the Pacific," was selected, and *Pacific House* was officially designated the "theme building" of the exposition. Covarrubias was asked to do a series of pictorially illuminated maps for *Pacific House*.



Top photograph: Miguel Covarrubias, left, his wife Rosa, and a friend pose before the mural map *The Peopling of the Pacific Basin*.  
 Bottom photograph: Partial view of the mural map *The Peoples of the Pacific Basin*.

Moses Saénz, the minister of education in Mexico, who also attended the meeting, helped persuade Covarrubias to become a contributor to the fair by telling him that the maps would be an educational depiction of sociological truth through art. This was a premise which appealed greatly to Covarrubias, and he sent a letter of acceptance to the board of directors of *Pacific House*.

Obviously pleased, Dr. Youtz wrote, "You have a unique style and a great fund of knowledge which will enable you to dramatize the educational purposes we have in mind. We are thrilled that you have accepted this commission."

Furthermore, Covarrubias was named general consultant of development for *Pacific House*, and asked to contribute to the dance program, color scheme, and any other phase which might interest him personally.

Why was Miguel Covarrubias chosen? Ray Lyman Wilbur, president of *Pacific House* said, "he was selected as the one who could make visual the idea of the Pacific area, not only with the imagination and skill of a great artist, but with an understanding of the verities and needs all people held in common. He was seen as an ethnologist and anthropologist, subtle and sensitive to the unrecorded past of unknown peoples, with a humorous, penetrating



Map of the world with the perspective of the Pacific Basin at its center. This color photocopy is taken directly from Miguel Covarrubias' notes and drawings which he used as a prototype for the development of the six mural-mans in Pacific Hall.



perspicacity of contemporaneous life and with a wide knowledge of the governmental forms and trade relations of the moving forces that bind peoples together or sever their relations.”

Covarrubias agreed to do the mural maps because he also strongly supported the idea that knowledge of the countries of the Pacific basin would help create the friendly relations which make for a wider understanding among peoples.

When Covarrubias arrived in San Francisco to begin work on the maps, the board had settled on six because of what then seemed the high cost of producing them. The murals were to be in the form of maps of the Pacific rim area. As a basis, two outline maps of the world were prepared by Dr. Van der Grinten through Dr. Carl O. Sauer, head of the geography department of the University of California. These were the first maps of the world to be drawn with the Pacific Ocean as the center. Thus, *Pacific House* had the distinction of having published the first Pacific world maps of their kind.

Covarrubias had long been interested and supported the idea of transculturation. He was fascinated by the story of how people became what they are and why. As he traveled around the world he had collected information, photographs, and made copious sketches



Two detail views of The Flora and Fauna of the Pacific Basin mural maps. The area shows portions of North and South America.

of the peoples of the Pacific basin, their habitat, and their art with the idea of writing a book embodying these ideas. His notes and drawings served him well as he began outlining the murals.

Never satisfied with the information he possessed, upon his arrival in San Francisco, he undertook an arduous research program with scholars Alfred L. Kroeber, head of the department of anthropology at the University of California at Berkeley and, through correspondence, with Dr. Erna Gunther from the University of Washington, and other anthropologists around the country.

Covarrubias conceived the maps as a means of giving a laymen's view of anthropology. He wanted to stress the contributions of Pacific cultures to contemporary civilization. It was essentially an attempt at race classification in order to extend knowledge of the countries of the Pacific basin.

The first of Covarrubias' maps illustrated The Fauna and Flora; the second, The Peoples; the third, The Economy; the fourth, The Art Styles; the fifth, The Native Means of Transportation; and the sixth, The Native Types of Dwellings of the countries of the Pacific area. "The forms were completely drawn with facetious disregard for realistic relationships." Covarrubias depicted

prototypes of people going about their daily business, with their economic and cultural life woven into a modern tapestry of joy and color and form, sharp and precise in concept. There is not an instant in these high-keyed decorative murals. They are full of interesting information that is often quaintly humorous as in his depiction of the peoples of Mexico where he put Emiliano Zapata as an agrarian revolutionary, in contrast to two of the North American representatives, a portly, Eastern, business executive with a cigar in his mouth and a voluptuous, Hollywood sun-worshipper in a bathing suit and goggles."

The Golden Gate International committee provided an apartment on Bush Street for Miguel and Rosa, his wife. An assistant from Mexico joined him. "El Corcito" Ruiz was a childhood friend, and a well-known artist in his own right. Covarrubias was also assisted by Anne Medalie of San Francisco and Elizabeth Mitchell of Colorado Springs. Anne was a Russian-American painter who, after working with Covarrubias on the maps, went to live and paint in Ajijic, Mexico. Such was her success that she had several exhibitions in Mexico City, including one at Bellas Artes.





Miguel Covarrubias posing in front of *The Art Styles of the Pacific Basin* mural map which depicts Eastern Canada and The Great Lakes region.



Color photocopy study of a Balinese or Malaysian high-ranking male  
created for *The Peoples of Pacific Basin* mural map.



Thinking about where the murals would be located and the numbers of people passing through the halls, Covarrubias developed a new technique for the maps. The medium employed was a flat duco lacquer with a nitro-cellulose base, handled not as an opaque lacquer, but simply by applying pure dry pigments with a clear lacquer diluted in lacquer thinner then applied to the panels. The particles of color became imbedded with each brush stroke into the nitrocellulose base. It was, in fact, a fresco in lacquer instead of on the customary plaster.

Covarrubias was not sure how his experiment would turn out. work began and, about a week into the venture, "El Corcito" decided to play a joke on him. He climbed up the ladder and pretended to pull off a small island. "Miguel, Miguel, look, look it's coming off. Your system is no good." Horrified, they all stared at each other. Miguel was convinced he had failed. Would they have time to start all over again? Seeing how crest-fallen he looked, "El Corcito" took pity on him and confessed.

It wasn't long before everyone working on the murals became aware of the excellence of Covarrubias' new technique which made for a permanent, hard and washable surface which would be impervious to damage from the many people who would certainly be





crowding around the murals. The larger maps (15' x 24') were divided into 12 masonite panels, and the smaller ones (9' x 13') into 4 which were then joined and attached to the walls.

Designed by William Gladstone Merchant, *Pacific House*, the dominant decoration of the main walls were Covarrubias' six illuminated maps of "The Pageant of the Pacific," which won critical praise, and were considered by many critics to be the best original art at the fair.

Said one critic, "The embellishment of *Pacific House* of which Miguel Covarrubias played such an important role was one of the delightful and much talked about features of the Golden Gate Exposition. Mackinley Helm wrote, "Covarrubias has just about summed up his special interests and proficiencies as a plastic artist with these murals, symbolizing the daily life and civilizations of the principal Pacific countries."

*Fortune* magazine observed, "not only are the mural maps first rate works of art, but the research job behind them is prodigious. They are unparalleled in the way in which they combine education, decoration, and entertainment, providing painless instruction to the public."



Color photocopy  
of a sketch for a  
South Seas  
female  
considered for  
*The Peoples of  
Pacific Basin*  
mural map.

Others remarked, “without being dramatic, the total effect is gay, even exhilarating, full of fascinating information that is often quaintly humorous,” and “the freshness and beauty of his maps are only equaled by their value as visual educators.” Still others “They are exceedingly well done and a fine idea for presenting geography in a novel and effective way,” and “Without a doubt, these maps of man relating him to his environment are provocative and compelling of thought!”

A large portfolio of lithographs of the six maps was produced by *Pacific House* in 1940, and was their first documented publication. The portfolio was in great demand by the many visitors who came to the fair and were captivated by the maps. It's publication ran into many thousands. Each was bound in tapa cloth made for Covarrubias by an artist in Indonesia. At the back in a special pocket, there were Spanish, Russian, and Chinese editions of the text.

Covarrubias also designed an attractive poster for *Pacific House*, which depicted an ancient Mayan priest in full regalia. It too was in great demand by those who visited the *Pacific House* during and after the World's Fair.



Color photocopy of two original sketches of two Polynesian females considered for *The Peoples of the Pacific Basin* mural map.

After the fair closed, the maps were lent to the Museum of Natural History in New York City, where they remained for twelve years. They proved to be as popular as they were during the World's Fair on Treasure Island. Through the sale of the portfolio, Covarrubias gained world-wide recognition as an innovator designer of maps, and went on to become a highly successful painter of mural maps.

We are therefore most fortunate to have the Covarrubias' "Maps of the Pacific" here in San Francisco for all to enjoy. Today five are located at the World Trade Center in the Ferry Building. Art and Styles is missing. This was one of the most popular because of its design of ceramics, textiles, metals, wood and stone carving, and tattooing.

When the maps were returned to the Pacific House, Art and Styles was stored because of lack of space. I challenge the City of San Francisco to find it, and hang it with the others when a new location for the maps is determined.

We must continue to honor the artists who contributed to the Golden Gate International Exposition. It is up to the citizens of San Francisco to make sure that we preserve the art work which was not

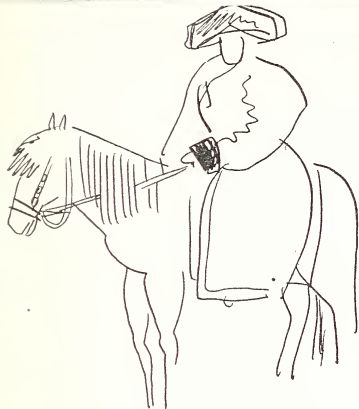
destroyed or lost, and which helped make the 1939 Golden Gate International Exposition a success.

Speech written and delivered by Adriana Williams at the *Treasure Island Rediscovered* symposium on September 16, 1989.

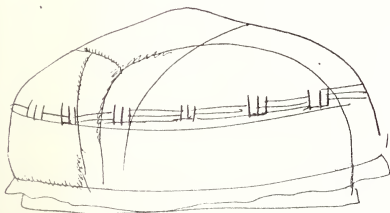


Miguel Covarrubias and Antonio Ruiz together working on designs for *The Art Styles of the Pacific Basin* mural map, 1938.

BUR YAT



KALMUK .



Photocopy taken from original Covarrubias sketches for *The Peoples of the Pacific Basin* mural map. Central Asian cultures are represented in these line drawings.



# AUSTRALIA

Australia.



Photocopy taken from original Covarrubias sketches for *The Peoples of the Pacific Basin* mural map. These line drawings depict the Australian Aborigines.







ANNE ROSENTHAL  
FINE ART CONSERVATION  
Box 150384, San Rafael, California 94915-0384  
415-457-1549

Ms. Debra Lehane, Project Director  
San Francisco Arts Commission  
25 Van Ness Ave., Suite 240  
San Francisco, CA 94102

February 25, 2001

**RE: Costs for Mural Work, Covarrubias**

Dear Debra,

Enclosed is my report on the "Pageant of the Pacific" mural by Covarrubias, at the World Trade Center at the Ferry Building.

With regard to cost: Determination of cost is difficult to project, considering that little opportunity for experimentation with cleaning techniques has been possible. Costs are listed in a very broad range to allow variation in degrees of treatment possible. Cleaning and compensation of losses can be very time consuming with this type of painting, wherein even slight changes of surface are noticeable.

I recommend that the contracting of this work be done in stages, so that a more accurate cost proposal can be determined. For example, one of the smaller murals may be treated first, in order to assess methods and results. Given more experience, the conservator can more accurately predict (or extrapolate) costs for the remaining murals. Further, due to the very large scale and numbers of the murals, treatment can be expected to continue over several years.

The range of cost, \$115,000.- \$170,000.00 does not include transportation and/or storage costs.

If you have further questions, please do not hesitate to call.

Best regards,



Cf: lab01004

# ANNE ROSENTHAL

## FINE ART CONSERVATION

Box 150384, San Rafael, California 94915-0384

415-457-1549

### MIGUEL COVARRUBIAS MURALS

#### "PAGEANT OF THE PACIFIC"

Mural Maps Commissioned by Pacific House for the World's Fair 1939-40  
Treasure Island, San Francisco, California  
Murals now located at the World Trade Center, Ferry Building, San Francisco

#### EXAMINATION REPORT AND CONSERVATION RECOMMENDATIONS

---

##### **Titles:**

- 1) Peoples of the Pacific, ca. 15' x 24' (178" x 288" overall, 12 panels)
- 2) Fauna and Flora of the Pacific, ca. 15' x 24' (12 panels, each ca. 7'6" x 4')
- 3) Economy of the Pacific, ca. 15' x 24' (12 panels, each ca. 7'6" x 4')
- 4) Native Dwellings of the Pacific Area, ca. 8' x 13' (98" x 156" overall, 4 panels)
- 5) Native Means of Transportation in the Pacific Area, ca. 8' x 13' (97 1/4" x 156" overall, 4 panels)

Missing: Art Forms of the Pacific Area, ca. 15' x 24' (12 panels ca. 7'6" x 4')

**Support:** Masonite panels, framed in unknown manner on the reverse

**Medium:** flat duco lacquer with nitrocellulose base (unconfirmed)

**Examination Dates:** January 12 and 17, 2000 by Anne Rosenthal and Debra Lehane

**Examination Aids:** quartz light, 4x head loupe magnification, various organic solvents and detergents

---

#### EXAMINATION AND CONDITION:

##### **Support:**

Each mural consists of multiple panels of 1/4" masonite, butted together with an unknown means of reinforcement on the verso. The seams between the panels are quite visible, without being distracting, and the construction appears to be generally sound and in plane. The larger murals (approximately 15' high by 24' wide) consist of twelve panels, arranged in two horizontal rows of six panels, one row above the other. The composition is horizontal overall, however, the individual panel sections are vertical (i.e. the longest dimension of each panel being upright.) The smaller murals, which are approximately 8' high by 15' wide, consist of four upright (vertical) panels placed side by side. These also create an overall horizontal design.

While the method of construction is unknown, the conservator posits that the masonite panels are individually adhered on the verso to furring strips for reinforcement, and that the furring is probably strengthened and united to additional framing with hardware (nails/screws/straps?). Screws or nails were probably not used to secure the panels from the front, as there are no consistent patterns of breakage/splits/losses/insecurities/planar deformations above or below the paint to indicate this approach. Some few brads have been driven from the front through the masonite, however these are anomalous, and may only indicate later efforts to re-join areas where the panels popped loose from the furring. Since the murals have been moved more than once, it is hoped that an easily reversible method of framing will be found on the verso, and future disassembly will be straightforward.

Numerous losses and disfiguring repairs are noted at edges and corners of the panels. Additionally, there are a few scattered mechanical damages such as scratches and punctures. These are the apparent result of past roughshod handling, transit, and/or installation. Old repairs are distinguished by uneven filling material and mismatched color.

#### **Ground:**

There is a smooth white layer of unknown composition serving as a ground layer to the paint. This fairly uniform layer imparts a slight eggshell texture overall.

The ground imparts slight gloss (satin sheen), and is used as a design element at the corners of each mural, achieving a vignette effect. Responsible for much of the luminosity of the work, the exposed ground is used to achieve the highlights of forms, and, due to the loose technique of brushwork, it is clearly visible between the strokes.

#### **Paint Film:**

In Adrianna Williams' book Covarrubias (University of Texas Press, Austin, 1994, pg.102-103), she describes the artist's medium as being "flat duco lacquer with a nitrocellulose base". She further writes that, "He diluted his medium with lacquer thinner, added pure dry pigment to it...then applied that combination to his masonite panels. Each brush stroke embedded particles of color into the lacquer; when the piece dried it was hard and water resistant, the color sealed inside a clean, clear shield."

The accuracy of this description is unconfirmed, as no analysis of the paint or ground has been undertaken. However, a lacquer-type medium is certainly plausible. The artist's technique of working the paint is similar to tempera or fresco painting, with linear brushmarking and some cross-hatching over a smooth ground. Color is laid on thinly in most areas, with multiple superimposed strokes used to achieve saturation and brilliance of color.

The body, consistency, and solubility of the paint film are variable. Cleaning tests on the "Transportation" mural, for example, produced less favorable results than on others. Close inspection reveals that the pigment to binder ratio is not consistent, and that some

areas (obviously medium rich) present a crackle system similar to dried lacquer, and that others are lean, without much visible presence of binder. Certainly, if the artist mixed his own colors, variations in the covering power and durability of the paint are to be expected.

Solubility and cleaning tests of the "Transportation" mural indicate the following reaction of the paint film:

Dry cleaning	not soluble
Water	somewhat soluble with friction
Ammonia	soluble with friction
Naptha	not soluble
Acetone	very soluble

Based upon these results, the "hard and water resistant" quality of the paint described by Ms. Williams is inaccurate. While some areas are water resistant, the paintings are not reliably durable, especially considering that friction is required to remove extraneous surface coatings.

The paint film is otherwise generally sound, with the exception of localized areas of mechanical damage, flaking and loss. Misguided cleaning efforts to remove stains, graffiti or foreign debris have produced halos of abrasion. Paint is burnished and obliterated in areas subjected to repeated touching of the surface. Mirror-image patterns of abrasion and loss, such as noted in the "Dwellings" mural, appear to be the result of past packing/shipping or storage, with panels placed face to face without sufficient protection between.

Old retouchings, probably executed in an oil medium, appear dark and opaque compared to the light, almost translucent color of the original paint. These are found mainly at the edges and corners of the panels, where repairs correct chip losses.

#### Surface Coatings:

The murals appear to be unvarnished. Overall surface grime resembling nicotine, hand-soil and dust, discolor the surfaces and impart a dulled and yellowed appearance. The binding medium of the paint and ground may have naturally mellowed with age, but cleaning tests, and areas "cleansed" by liquids which have run across the paint surface, attest to the presence of a substantial grime layer.

Solubility and cleaning tests of the "Transportation" mural indicate the following reaction of the surface coatings:

Dry cleaning	very slightly removed
Water	soluble with friction
Ammonia	soluble with friction
Naptha	not soluble (some foreign matter slightly soluble)
Acetone	paint very soluble

**Damage Noted on Individual Murals:**

In addition to the general surface soil and scattered mechanical damages, the murals have the following noted conditions:

**Native Means of Transportation: (4 panels located at ground level)**

1. Most soiled of the murals, with buildup of grime in lower 4-5 feet.
2. First and second panels stained with small brown spots (similar to foxing), throughout Australia and the legend; this may be due to seepage of resin from the masonite, or mold related activity.
3. Numerous drips, especially through the center bottom where liquid marks are characterized by dark accumulations at the terminus.
4. Pencil graffiti in the legend.
5. Large smear under compass, resulting from cleaning attempt (against direction of the brushstrokes).
6. Surface burnished and glossy, resulting from debris and handling.
7. Several large scratches; small indentations in the ground.
8. Abrasion along the bottom edge.
9. Figure below New Guinea defaced.
10. Significant disruptions of design by abrasion (revealing white ground).
11. Patches of soil and foreign debris.

**Peoples of the Pacific: 12 panels, 6 panels set at right angles to 6 panels**

1. Discolored repairs at junctions of the panels (where 4 corners meet.)
2. Old putty and repaint of repairs, matte and dark in color.
3. Abrasions and scratches, most significant at top surface of ramp handrail.
4. Some defacement of figures in Australia.
5. Overall surface gloss is irregular.
6. Some watercolor-like inpainting on the legend.
7. Numerous horizontal scratches.
8. Splashes of liquids on surface, especially on the last lower right panel.

**Economy of the Pacific: (12 panels)**

1. Numerous linear drip and tide stains, possibly from condensation.
2. Poor condition of corners and abutments.
3. Stained and spotted legend.
4. Disfigured repairs and retouching, especially along right edge.

**Native Dwellings: (4 panels)**

1. Remnant of label on title at lower left (removed by the Arts Commission Project Director)
2. Abrasion above legend, possibly due to past cleaning of drip markings.
3. Drip markings difficult to remove.
4. "Butterfly" (i.e. mirror image) patterns of abrasion and paint loss on numerous panels.

5. Scratches in bottom sections.

**The Fauna and Flora of the Pacific:** (12 panels)

1. Numerous and severe blanched drips and tide stains at the level below the ramp (probably caused by liquids used to clean the ramp).
2. Discolored repairs at junctions of the panels (where 4 corners meet.)
3. "Butterfly" (mirror-image) patterns of abrasion and paint loss on some panels.

**SUMMARY AND RECOMMENDED TREATMENT:**

**Condition Summary:**

Considering years of exposure and public contact, the murals are in better condition than one would expect. Structurally, the panels appear sound, with the exception of some mechanical damages at the edges and corners, which reveal numerous chip losses, fillings and repainting. The paint film and ground are stable for the most part, with few areas of flaking paint. The paint film is extremely delicate and cannot endure much friction to the surface. Most paint losses are the result of past handling and transport (causing surface abrasion), yet there are numerous examples of wear from misguided cleaning efforts, visitor contact and both accidental and mischievous handling. The outstanding feature of their condition is disfigurement due to overall grime, stains due to splashes of liquids and condensation, and old repairs, which have darkened and become visually distracting.

**Recommendations:**

The conservator understands that the Port of San Francisco intends to remove these murals for redevelopment of the building. With this in mind, the following recommendations are offered:

1. The Port should employ a professional art handler to dismantle, move and store the panels, with intermittent consultation with an art conservator, at least during the initial stages of developing a workable procedure. An art conservator should be on hand to contribute to any decisions affecting the condition of the murals, and in case of accidental damage. The masonite is expected to be brittle; some remedial on-site treatment may be required.
2. The Port should provide adequately supportive storage crates and appropriate wrapping materials, to avoid damages during transport and storage, and provide adequate environmental controls throughout the storage period. Upon removal from their current climate and from their secondary framework (or hanging apparatus), the panels may be more susceptible to dimensional changes such as warping or twisting. To avoid myriad damages, and to facilitate reinstallation, climatic controls should be maintained at a stable level, in the range of approximately 60-68 degrees F, and 50-65% relative humidity.
3. Conservation work should follow the standards of practice specified by the American Institute of Conservation of Historic and Artistic Works, including



photographic and written reports of methods and materials used. Conservation treatment should have the aim of improving the appearance and longevity of the works. Specific treatment would include the following:

- a) Cleaning: Solvent tests were necessarily limited during this examination; however, treatment to remove coatings and foreign matter should be done to the extent safely possible. This may be severely limited wherever the paint film, or exposed ground, is sensitive to water and cleaning agents (as was found to be the case in some areas). Particularly delicate areas may be cleaned only lightly, and these would require careful handling to blend to adjacent areas. Only qualified and experienced art conservators should be considered for this work, due to the mature judgment and skills required to produce good results. The tenderness of the paint, and the precise technique used by the artist, leaves little margin for error. Even the most careful application of cleaning agents carries risk of paint abrasion or loss. Cleaning is expected to be a critical step in the overall presentation of the paintings in the future. The surface sheen of the paintings will probably not be uniform, even after treatment; however, blemishes should be substantially improved. If a safe technique of cleaning allows more general removal of surface grime, significant brightening of the colors would be expected.
  - b) Repairs: Remove/amend/re-repair areas of old damage, for visual and structural improvement. Some reinforcement of corners may be necessary. Remove repaints as necessary/possible. Compensate losses as needed with inpainting, to reintegrate the design, matching colors more exactly, with a non-yellowing/darkening reversible medium.
  - c) Surface Coating: Apply a surface coating (varnish) only if necessary to re-saturate areas of blanching paint or ground.
4. Assess the structural support on the verso of the panels, and make recommendations, if needed, to improve stability for the new installation. Engineering consultation would not be within the purview of the conservator.

6835 California Street  
San Francisco, CA 94121  
Phone 415.387.9050  
Fax 415.752.0845  
E-mail [sunight@silus.com](mailto:sunight@silus.com)

**Robert F. Bailey, CE**  
**Engineer**

# Fax

<b>To:</b> John Maillard & Cheryl Belansky	<b>From:</b> Bob Bailey
<b>Fax:</b> 543 6609	<b>Pages:</b> 1
<b>Phone:</b> 543.2410	<b>Date:</b> February 24, 2001
<b>Re:</b> Fountain of the Tortoises	<b>CC:</b> Debra Lehane- FAX 252-2595

☐ Urgent    ☐ For Review    ☐ Please Comment    ☐ Please Reply    ☐ Please Recycle

• **Comments**

Please send me a copy of the current construction schedule for completing the bush hammering of the trenches and concrete basin, the installation of the drilled and epoxied dowels, the tension testing of the dowels and the placement of the concrete and Emaco S66 CI so that I can schedule site observation visits. I also need to know the schedule for setting the stone. If there are changes to the schedule please keep me apprised of these in a timely manner as well.

Thank you.

*Bob Bailey*





**TREASURE ISLAND DEVELOPMENT AUTHORITY  
City and County of San Francisco**

**Agenda Item No. 9**

**March 14, 2001**

---

**Subject:** Resolution authorizing the Authority to extend a month-to-month sublease with Island Creative Management for Building 99 for a period not to exceed 12 months.

**Staff Contact:** London Breed, Development Specialist 274-0665

**SUMMARY OF PROPOSED ACTION**

The staff is requesting the Authority to adopt a resolution to continue a month-to-month sublease with Island Creative Management for the use of Building 99 on the same terms as the original sublease dated September 1, 1999 for an additional period not to exceed 12 months.

**DISCUSSION**

The sublease provides for use of a portion of Building 99 by Island Creative Management for building sets in television, film production, and special events. On September 13, 2000, the Authority approved a resolution to amend the original sublease to increase the monthly rental rate for additional space and extend the term. The monthly base rent is ten thousand five hundred dollars (\$10,500) for use of space in Building 99.

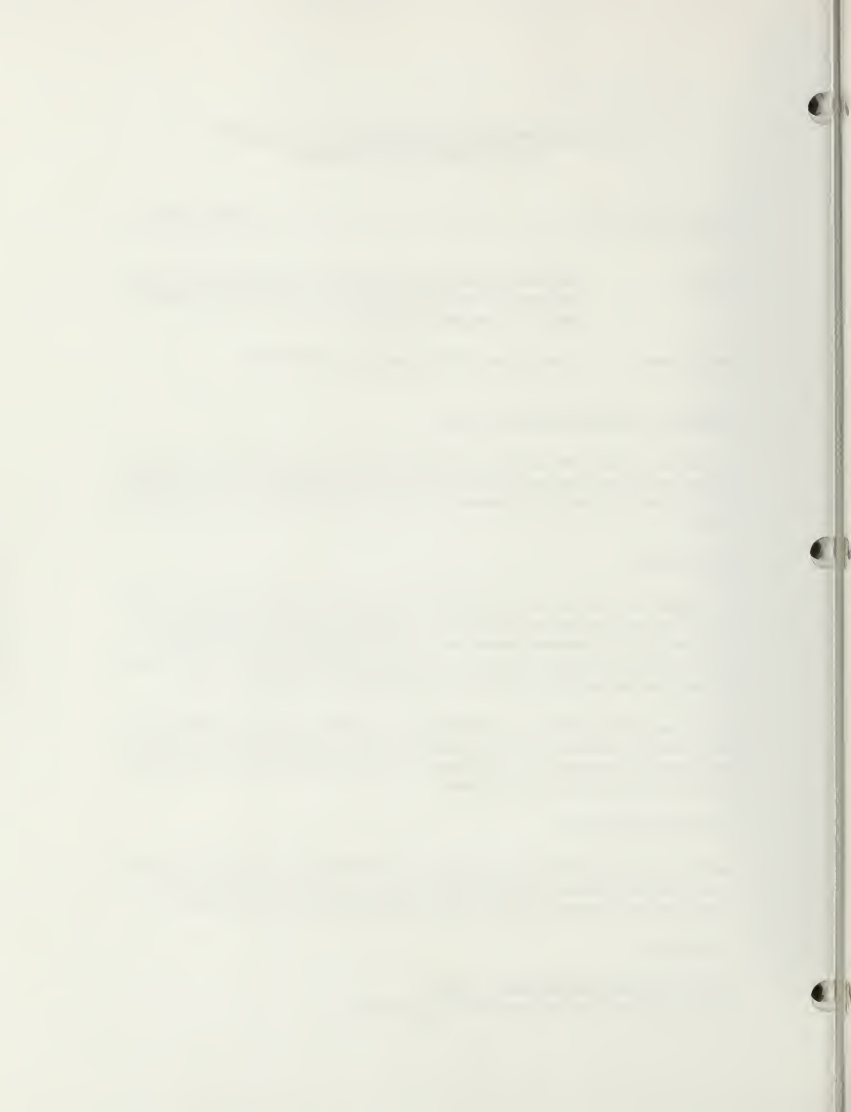
Island Creative Management has created jobs for over 700 employees from Stagehands Local 16 in San Francisco. Under the Authority's Rules and Procedures for the transfer of Real Property, continuation of the sublease on a month-to-month basis for an additional one-year term requires Authority approval.

**RECOMMENDATION**

Staff recommends approval for the Authority to continue a month-to-month sublease with Island Creative Management for an additional one-year. Further continuation of the Sublease beyond February 28, 2002 would require additional Authority approval.

**EXHIBITS**

Original Sublease dated September 1, 1999  
First Amendment to the Sublease dated August 21, 2000



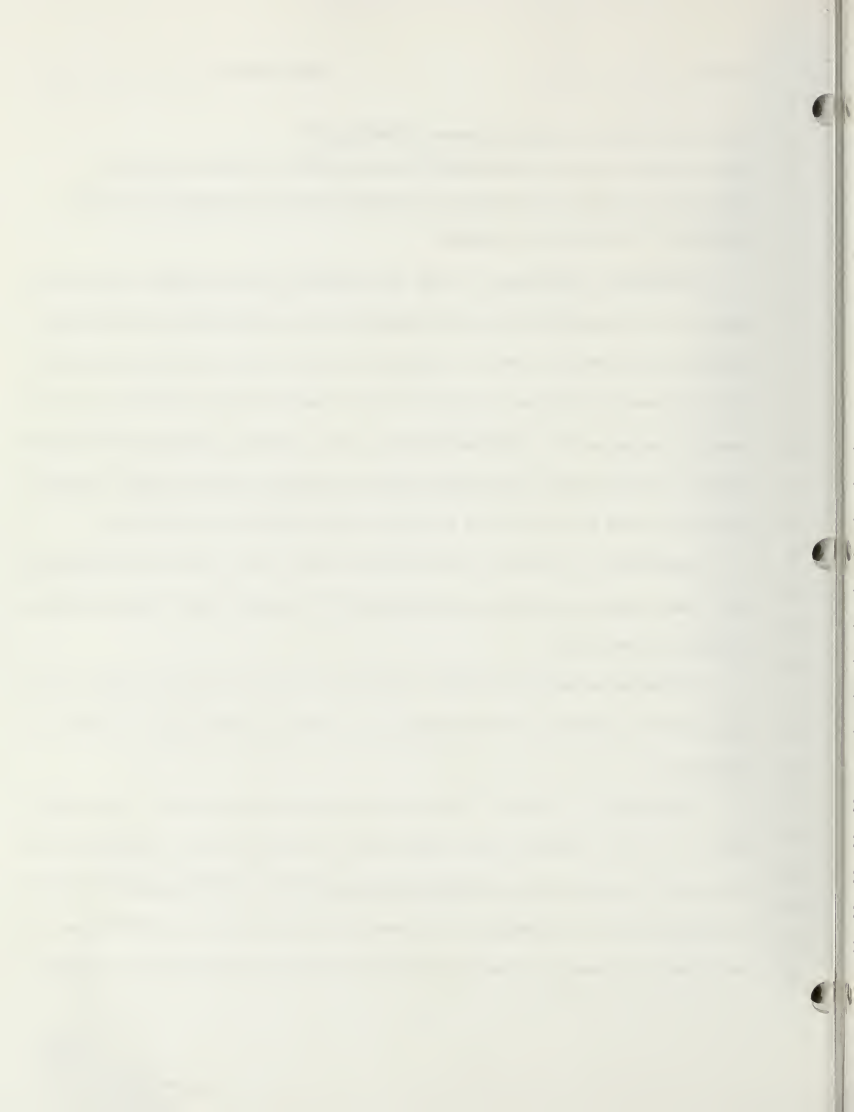
[Continuation of Month-to-Month Sublease of Building 99]  
AUTHORIZING THE EXECUTIVE DIRECTOR TO EXTEND A MONTH-TO-MONTH  
SUBLEASE FOR BUILDING 99 WITH ISLAND CREATIVE MANAGEMENT INC. FOR A  
PERIOD NOT TO EXCEED 12 MONTHS

**WHEREAS**, on September 1, 1999, the Authority's Executive Director, acting under Section 10 of the Authority's Rules and Procedures for the Transfer and Use of Real Property, adopted by the Authority on March 11, 1998 (the "Transfer Rules"), entered into a month-to-month sublease (the "Sublease"), a copy of which is attached hereto as Exhibit A, with Island Creative Management Inc. ("Subtenant") for the use of a portion of Building 99 (the "Initial Premises") for the building of sets used in television and film production and in connection with special events, at a rental rate of six thousand dollars (\$6,000) per month; and

**WHEREAS**, under Section 10 of the Transfer Rules, even a month-to-month sublease has to be separately approved by the Authority if the cumulative term of such sublease exceeds six months; and

**WHEREAS**, on February 9, 2000, the Board of Directors of the Authority approved and authorized the continuation of the Sublease on a month-to-month basis for another six months, and

**WHEREAS**, on August 21, 2000, the Authority's Executive Director, acting under Section 10 of the Transfer Rules, entered into an amendment to the Sublease (the "Amendment"), a copy of which is attached hereto as Exhibit B, with Subtenant for the use of an additional portion of Building 99 (the "Expansion Premises") (both the Initial Premises and the Expansion Premises are collectively referred to herein as the "Premises") on a month-to-





1 month basis, and the Amendment increased the rental rate for the Premises to Ten Thousand  
2 Five Hundred Dollars (\$10,500) per month; and

3 **WHEREAS** on September 13, 2000, the Board of Directors of the Authority approved  
4 the amendment to the sublease to increase the premises and monthly rental rate and  
5 authorized the continuation of the Sublease on a month-to-month basis for another six  
6 months, and the approved six month extension has expired; and

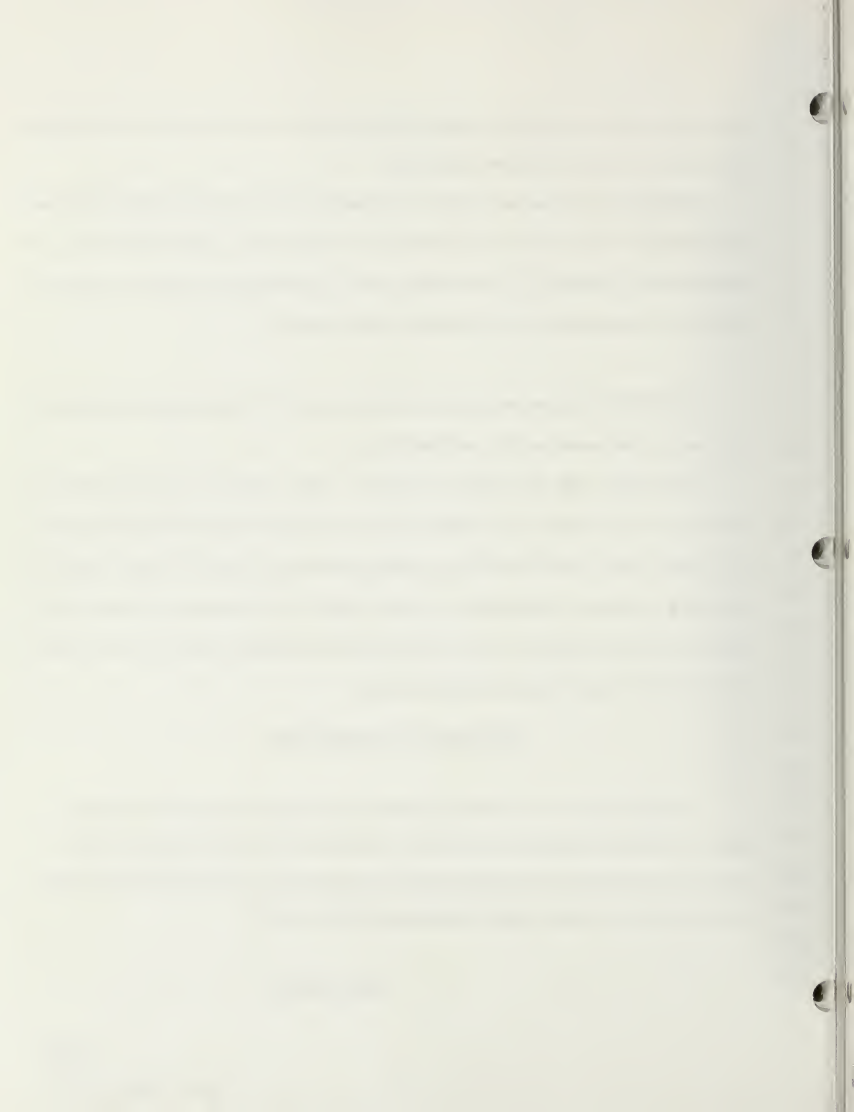
7  
8 **WHEREAS**, Subtenant wishes to continue to occupy the Premises under the Sublease  
9 for at least another twelve months; now therefore be it

10  
11 **RESOLVED:** That the Board of Directors hereby approves and authorizes the  
12 continuation of the Sublease, as amended by the Amendment, on a month-to-month basis for  
13 up to another twelve months, provided that nothing herein shall limit the Authority's ability to  
14 terminate the Sublease on thirty days notice as provided in the Sublease and provided further  
15 that any continued occupancy of the Premises under the Sublease past February 28, 2002  
16 shall require the separate approval of the Authority.

17  
18 **CERTIFICATE OF SECRETARY**

19  
20 I hereby certify that I am the duly elected and acting Secretary of the Treasure  
21 Island Development Authority, a California nonprofit public benefit corporation, and  
22 that the above Resolution was duly adopted and approved by the Board of Directors of  
23 the Authority at a properly noticed meeting on March 14, 2001.

24  
25 \_\_\_\_\_  
John Elberling







**SUBLEASE**

**between**

**THE TREASURE ISLAND DEVELOPMENT AUTHORITY**

**as Sublandlord**

**and**

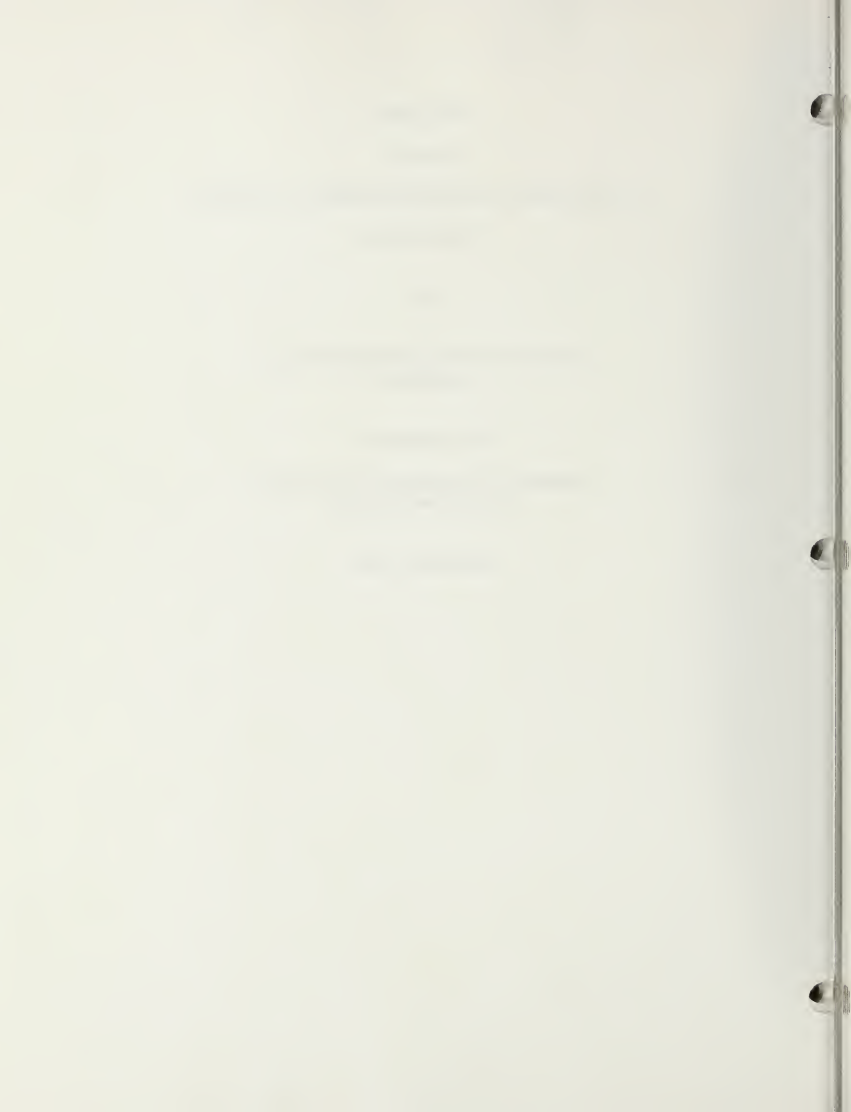
**ISLAND CREATIVE MANAGEMENT LLC**

**as Subtenant**

**For the Sublease of**

**Building 99 at Naval Station Treasure Island  
San Francisco, California**

**September 1, 1999**



## TREASURE ISLAND SUBLEASE

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**LIST OF EXHIBITS:**

EXHIBIT A -- Master Lease

EXHIBIT B -- Drawing of Premises

EXHIBIT C -- Seismic Report

EXHIBIT D -- Rules and Regulations

EXHIBIT E -- Utilities



## TREASURE ISLAND SUBLEASE

THIS SUBLEASE (the "Sublease"), dated as of this 1st of September, 1999, is by and between the Treasure Island Development Authority ("Sublandlord") and Island Creative Management, a Limited Liability Corporation ("Subtenant"). From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Sublease is made with reference to the following facts and circumstances:

A. The United States of America, acting by and through the Department of Navy ("Master Landlord") and Sublandlord entered into a lease dated September 4, 1998, as amended by that certain Amendment to Lease dated January 14, 1999, (the "Master Lease"), a copy of which is attached hereto as Exhibit A. Under the Master Lease, the Master Landlord leased to Sublandlord on Naval Station Treasure Island (the "Property"), among other things, Building 99 (the "Building"), together with a non-exclusive right to use certain parking areas adjacent thereto, all as more particularly shown on the map attached hereto as Exhibit B (the "Premises").

B. Subtenant desires to sublet the Premises from Sublandlord and Sublandlord is willing to sublet the Premises to Subtenant on the terms and conditions contained in this Sublease.

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

### **1. PREMISES**

**1.1. Subleased Premises.** Subject to the terms, covenants and conditions of this Sublease, Sublandlord subleases to Subtenant the Premises.

#### **1.2. As Is Condition of Premises.**

(a) **Inspection of Premises.** Subtenant represents and warrants that Subtenant has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them, ("Subtenant's Agents") of the Premises and the suitability of the Premises for Subtenant's intended use. Subtenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses. As part of its inspection of the Premises, Subtenant acknowledges its receipt and review of the Seismic Report referenced in Section 1.2(c) below and the Joint Inspection Report referenced in

Inspection Report referenced in Section 6 of the Master Lease.

(b) **As Is; Disclaimer of Representations.** Subtenant acknowledges and agrees that the Premises are being subleased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties, including without limitation the orders and citations of any regulatory authority with jurisdiction over life and safety issues concerning the Premises ("Laws") governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Sublease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Subtenant acknowledges and agrees that neither Sublandlord, the City and County of San Francisco ("City"), nor any of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees or contractors, or their respective heirs, legal representatives, successors and assigns ("Sublandlord's Agents") have made, and Sublandlord hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, the matters described in the Seismic Report (as defined below) (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the feasibility, cost or legality of constructing any Alterations on the Premises if required for Subtenant's use and permitted under this Sublease, (v) the safety of the Premises, whether for the use of Subtenant or any other person, including Subtenant's Agents or Subtenant's clients, customers, vendors, invitees, guests, members, licensees, assignees or Subtenants ("Subtenant's Invitees"), or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(c) **Seismic Report.** Without limiting Section 1.2 (b) above, Subtenant expressly acknowledges for itself and Subtenant's Agents that it received and read that certain report dated August 1995, entitled "*Treasure Island Reuse Plan: Physical Characteristics, Building and Infrastructure Conditions,*" prepared for the Office of Military Base Conversion, Department of City Planning, and the Redevelopment Agency of the City and County of San Francisco, (the "Seismic Report"), a copy of the cover page of which is attached hereto as Exhibit C. Subtenant has had an adequate opportunity to review the Seismic Report with expert consultants of its own choosing. The Seismic Report, among other matters, describes the conditions of the soils of the Property and points out that in the area of the Property where the Premises are located, an earthquake of magnitude 7 or greater is likely to cause the ground under and around the Premises to spread laterally to a distance of ten (10) or more feet and/or result in other risks. In that event, there is a significant risk that the Building and any other structures or improvements located on or about the Premises, may fail structurally and collapse.

## 2. COMPLIANCE WITH MASTER LEASE

2.1. **Incorporation by Reference.** All of the terms and conditions of the Master Lease are hereby incorporated by reference into this Sublease as if fully set forth herein

2.2. **Conflict.** If any of the provisions of this Sublease conflict with any portion of the Master Lease as incorporated herein, then the terms of the Master Lease shall govern.

2.3. **Compliance with Master Lease.** Subtenant shall not do or permit to be done anything which would constitute a violation or a breach of any of the terms, conditions or provisions of the Master Lease or which would cause the Master Lease to be terminated or forfeited by virtue of any rights of termination reserved by or vested in the Master Landlord.

2.4. **Automatic Termination.** If the Master Lease terminates for any reason whatsoever, this Sublease shall automatically terminate and the Parties shall thereafter be relieved from all liabilities and obligations under this Sublease, except for liabilities and obligations which expressly survive termination of this Sublease. Subtenant acknowledges and agrees that it has reviewed the Master Lease, is aware of the circumstances upon which the Master Lease may be terminated and hereby assumes all risks associated with the automatic termination of this Sublease because of the termination of the Master Lease.

## 3. TERM

3.1. **Term of Sublease.** The term of this Sublease (the "Term") shall be on a month-to-month basis, shall commence on September 1, 1999 (the "Commencement Date") and, may be terminated by either party, for any reason and without liability for such termination, upon thirty (30) days prior written notice to the other Party. Notwithstanding the foregoing, this Sublease shall automatically terminate on February 28, 2000 (the "Upset Date") unless the Board of Directors of the Sublandlord approves a resolution extending the Term of this Sublease beyond the Upset Date.

## 4. RENT

4.1. **Base Rent.** Throughout the Term, beginning on the Commencement Date, Subtenant shall pay to Sublandlord base rent in the amount of Six Thousand Dollars (\$6,000) per month (the "Base Rent"). Base Rent shall be paid to the Sublandlord without prior demand and without any deduction, setoff, or counterclaim whatsoever. Base Rent shall be payable on or before the first day of each month, in advance, at the Notice Address of Sublandlord provided in Section 20.1 hereof or such other place as Sublandlord may designate in writing. If the Commencement Date occurs on a date other than the first day of a calendar month, or the Sublease terminates on a day other than the last day of a calendar month, then the monthly payment of Base Rent for such fractional month shall prorated based on a thirty (30) day month.

4.2. **Additional Charges.** In addition to Base Rent, Subtenant shall pay any and all real property taxes, possessory interest taxes and other costs, impositions and expenses related to the Premises as provided in Section 4 hereof, plus all other charges related to the Premises otherwise payable by Subtenant to Sublandlord hereunder, including, without limitation, all late charges and default interest attributable to late payments and/or defaults of Subtenant hereunder and all utility charges (together, the "Additional Charges"). Together, Base Rent and Additional Charges shall hereinafter be referred to as the "Rent".

4.3. **Late Charge.** If Subtenant fails to pay any Rent within ten (10) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by Sublandlord and Subtenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that Sublandlord will incur as a result of any such failure by Subtenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate Sublandlord for its damages resulting from such failure to pay and Subtenant shall promptly pay such charge to Sublandlord together with such unpaid amount.

4.4. **Default Interest.** If any Rent is not paid within ten (10) days following the due date, such unpaid amount shall bear interest from the due date until paid at the rate of ten percent (10%), provided however that interest shall not be payable on late charges incurred by Subtenant nor on any amounts on which late charges are paid by Subtenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Subtenant.

## 5. TAXES, ASSESSMENTS AND OTHER EXPENSES

### 5.1. **Taxes and Assessments, Licenses, Permit Fees and Liens.**

(a) **Payment Responsibility.** Subtenant shall pay any and all real and personal property taxes, including, but not limited to, possessory interest taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every

description levied on or assessed against the Premises, any Alterations, Subtenant's Personal Property, or Subtenant's use of the Premises or any Alterations during the Term. Subtenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which Sublandlord receives the tax bill directly from the taxing authority, Subtenant shall reimburse Sublandlord for payment of such sums immediately upon demand.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Subtenant recognizes and agrees that this Sublease may create a possessory interest subject to property taxation and that Subtenant may be subject to the payment of property taxes levied on such interest.

(c) **No Liens.** Subtenant shall not allow or suffer a lien for any taxes payable by Subtenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without discharging the same as soon as practicable, and in no event subsequent to delinquency.

(d) **Reporting Information.** Subtenant agrees to provide such information as Sublandlord may request to enable Sublandlord to comply with any possessory interest tax reporting requirements applicable to this Sublease.

5.2. **Other Expenses.** This is a "triple net" Sublease. Accordingly, Subtenant shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Alterations permitted thereon, including, without limitation, the cost of any utilities, maintenance or services necessary for Subtenant's use.

5.3. **Evidence of Payment.** Subtenant shall, upon Sublandlord's request, furnish to Sublandlord within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to Sublandlord, evidencing payment thereof.

## 6. USE; COVENANTS TO PROTECT PREMISES

6.1. **Subtenant's Permitted Use.** Subtenant may use the Building as an office and for the building of sets used in television and film production and for special events, and for no other purpose.

6.2. **Rules and Regulations.** Subtenant agrees to adhere to all rules and regulations regarding the Premises attached hereto as Exhibit D, and any additional rules regarding security, ingress, egress, safety and sanitation applicable to the Premises or the Property, as such rules and

regulations may be prescribed by Master Landlord or Sublandlord from time to time and which are provided to Subtenant in advance of the enforcement thereof.

**6.3. Easements.** This Sublease shall be subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Premises or any portion thereof, and to the right of Master Landlord to grant such additional easements and rights-of-way over, across, in and upon the Premises as Master Landlord shall determine to be in the public interest ("Additional Easements"), provided that, as provided in Section 29 of the Master Lease, Master Landlord shall use its best efforts to minimize any interference with Subtenant's operations hereunder caused by the granting of any such Additional Easements and the granting of such Additional Easements shall be conditioned on the assumption by the grantee thereof of liability to Subtenant for such damages as Subtenant shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such Additional Easements as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities. To the best knowledge of the Mayor's Treasure Island Project Office, there are no existing Additional Easements or other encumbrances which would materially interfere with Subtenant's use of the Premises.

**6.4. No Interference with Navy Operations.** Subtenant shall not conduct operations, nor make any Alterations (as defined below), that would interfere with or otherwise restrict Master Landlord's operations or environmental clean-up or restoration actions by the Master Landlord, Sublandlord, the Environmental Protection Agency, the State of California or their contractors. Environmental clean-up, restoration or testing activities by these Parties shall take priority over the Subtenant's use of the Premises in the event of any conflict, provided, however, in such event, Master Landlord and Sublandlord shall use their best efforts to minimize any disruption of Subtenant's operation.

**6.5. No Unlawful Uses, Nuisances or Waste.** Without limiting the foregoing, Subtenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Subtenant shall eliminate any nuisances or hazards relating to its activities on or about the Premises.

## **7. ALTERATIONS**

**7.1. Alterations.** Subtenant shall not construct, install, make or permit to be made any alterations, installations or additions ("Alterations") in, to or about the Premises, without Sublandlord's prior written consent in each instance, which consent may given or withheld in



Sublandlord's sole and absolute discretion. Subject to Sublandlord's consent as provided above, any permitted Alterations shall be done at Subtenant's sole expense (i) in strict accordance with plans and specifications approved in advance by Sublandlord in writing, (ii) by duly licensed and bonded contractors or mechanics approved by Sublandlord or by program youths and staff under the supervision of qualified professionals, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that Sublandlord may reasonably impose. In no event shall the construction, installation or the making of any Alterations impair the use or operation of the Property, or any portion thereof, or Sublandlord's or Master Landlord's access thereto. Prior to the commencement of any work on the Premises to construct any permitted Alterations, Subtenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to Sublandlord. No material change from the plans and specifications approved by Sublandlord may be made without Sublandlord's prior consent. Sublandlord and Sublandlord's Agents shall have the right to inspect the course of such construction at all times.

**7.2. Historic Properties.** Without limiting the generality of the foregoing, Subtenant acknowledges and agrees that, pursuant to Section 15 of the Master Lease, no Alterations may be made to the Premises (i) which will affect the historic characteristics of the Premises or modify the appearance of the exterior of the Premises without Master Landlord's and Sublandlord's prior written consent or (ii) if such Alterations would preclude qualifying the Premises for inclusion on the National Register for Historic Places.

**7.3. Ownership of Alterations.** Any Alterations constructed on or affixed to the Premises by or on behalf of Subtenant pursuant to the terms and limitations of Section 7.1 above shall be and remain Subtenant's property during the Term. Upon the termination of this Sublease, Subtenant shall remove all such Alterations from the Premises in accordance with the provisions of Section 18 hereof, unless Sublandlord, at its sole option and without limiting any of the provisions of Section 7.1 above, requires that such Alterations remain on the Premises following the expiration or termination of this Sublease.

**7.4. Subtenant's Personal Property.** All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Subtenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Subtenant's Personal Property") shall be and remain the property of Subtenant and may be removed by it subject to the provisions of Section 18 hereof. Subtenant shall be solely responsible for providing any security or other protection of or maintenance to Subtenant's Personal Property.

**7.5. Sublandlord's Alterations of the Premises and Premises Systems.** Sublandlord reserves the right at any time to make alterations, additions, repairs, deletions or improvements to the common areas or any other part of the Premises, provided that any such alterations or additions shall not materially adversely affect the functional utilization of the

Premises for purposes stated herein.

## 8. REPAIRS AND MAINTENANCE

8.1. Subtenant Responsible for Maintenance and Repair. Subtenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises from and after the Commencement Date and shall keep the Premises in good condition and repair. Sublandlord shall not be responsible for the performance of any repairs, changes or alterations to the Premises, nor shall Sublandlord be liable for any portion of the cost thereof. Subtenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, which may be necessary to maintain the Premises at all times in clean, safe, attractive and sanitary condition and in good order and repair, to Sublandlord's and Master Landlord's reasonable satisfaction, provided, however, that neither Subtenant nor Sublandlord shall be required to make structural repairs or Alterations to correct conditions affecting the Premises existing prior to the Commencement Date. If any portion of the Premises is damaged by any activities conducted by Subtenant or Subtenant's Agents or Subtenant's Invitees hereunder, Subtenant shall immediately, at its sole cost, repair all such damage and restore the Premises to its previous condition.

8.2. Utilities. Sublandlord shall provide the basic building utilities and services described in the attached Exhibit E, (the "Standard Utilities and Services") to the Premises, subject to the terms and conditions contained therein. Subtenant shall be responsible for furnishing, at its sole costs, any utilities or services other than or in excess of the Standard Utilities and Services that Subtenant may need for its use of the Premises. Subtenant shall pay, without set off or counterclaim, all amounts due and owing for such Standard Utilities and Services at the rates provided in and as otherwise set forth in Exhibit E.

8.3. Floor Load. Without Sublandlord's prior written consent, which Sublandlord may give or refuse in its sole discretion, Subtenant shall not place or install in the Premises any equipment that weighs in excess of the normal load-bearing capacity of the floors of the Premises. If Sublandlord consents to the placement or installation of any such machine or equipment in the Premises, Subtenant at its sole expense shall reinforce the floor of the Premises, pursuant to plans and specifications approved by Sublandlord and otherwise in compliance with Section 7.1 [Alterations] to the extent necessary to assure that no damage to the Premises or weakening of any structural support will be occasioned thereby.

8.4. Janitorial Services. Subtenant shall provide all janitorial services for the Premises.

8.5. Pest Control. Subtenant shall provide and pay for all pest control services required within the Premises, and shall keep the Premises free of all pests at all times.



8.6. **Trash.** Subtenant shall deposit all trash into designated containers in the Premises in compliance with the Rules and Regulations attached hereto as **Exhibit D**. Subtenant shall pay for the removal of trash from the designated containers. Subtenant shall abide by all rules established by Sublandlord or Master Landlord for the handling of trash.

8.7. **No Right to Repair and Deduct.** Subtenant expressly waives the benefit of any existing or future Laws or judicial or administrative decision that would otherwise permit Subtenant to make repairs or replacements at Sublandlord's expense, or to terminate this Sublease because of Sublandlord's failure to keep the Premises or any part thereof in good order, condition or repair, or to abate or reduce any of Subtenant's obligations hereunder on account of the Premises or any part thereof being in need of repair or replacement. Without limiting the foregoing, Subtenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Subtenant to terminate this Sublease and with respect to any obligations of Sublandlord hereunder or any right of Subtenant to make repairs or replacements and deduct the cost thereof.

## 9. **LIENS**

Subtenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Subtenant. In the event Subtenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Sublandlord shall have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by Sublandlord and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Sublandlord by Subtenant upon demand. Sublandlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Sublandlord deems proper for its protection and protection of the Premises from mechanics' and materialmen's liens. Subtenant shall give Sublandlord at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises.

## 10. **COMPLIANCE WITH LAWS**

10.1. **Compliance with Laws.** Subtenant shall promptly, at its sole expense, maintain the Premises and Subtenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary, provided however, that Subtenant shall not be required to make repairs or structural changes to the Premises required solely to correct conditions affecting the Premises existing prior to the Commencement Date or not related to Subtenant's use of the Premises, unless the requirement for such changes is imposed as a result of any Alterations made or requested to be made by Subtenant. Such Laws shall include, without limitation, all Laws relating to health and safety

and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Sublease below). No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall give Subtenant any right to seek redress against Sublandlord for failing to comply with any Laws. Subtenant waives any rights now or hereafter conferred upon it by any existing or future Law to compel Sublandlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

#### **10.2. Regulatory Approvals.**

(a) **Responsible Party.** Subtenant understands and agrees that Subtenant's use of the Premises and construction of Alterations permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Subtenant shall be solely responsible for obtaining any and all such regulatory approvals, including without limitation any liquor permits or approvals. Subtenant shall not seek any regulatory approval without first obtaining the written consent of Sublandlord. Subtenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Subtenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Subtenant, and Sublandlord shall have no liability, monetary or otherwise, for any such fines or penalties. Subtenant shall indemnify, protect, defend and hold harmless forever ("Indemnify") the Sublandlord and City, including, but not limited to, all of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees, contractors, boards, commissions, departments, agencies and other subdivisions and each of the persons acting by, through or under each of them, and their respective heirs, legal representatives, successors and assigns, and each of them (the "Indemnified Parties") against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses") arising in connection with Subtenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

**10.3. Compliance with Sublandlord's Risk Management Requirements.** Subtenant shall not do anything, or permit anything to be done, in or about the Premises or any Alterations permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect Sublandlord from any potential premises liability. Subtenant shall faithfully observe, at its expense, any and all reasonable requirements of Sublandlord's Risk Manager with respect thereto and with the requirements of any policies of commercial general, all risk property or other policies of insurance at any time in force with respect to the Premises and any Alterations as required hereunder.

## **11. ENCUMBRANCES**

**11.1. Encumbrance By Subtenant.** Notwithstanding anything to the contrary contained in this Sublease, Subtenant shall not under any circumstances whatsoever create any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance or assignment or pledge of an asset as security in any manner against the Premises or Sublandlord's or Subtenant's interest under this Sublease.

## **12. DAMAGE OR DESTRUCTION**

**12.1. Damage or Destruction to the Premises.** In the case of damage to or destruction of the Premises by earthquake, flood or any other casualty, which (i) is not caused by Subtenant or Subtenant's Agents or Subtenant's Invitees, (ii) is not covered by the insurance described in Section 16 below, (iii) prevents Subtenant from operating the Premises for the purposes stated herein, and (iv) costs more than Ten Thousand Dollars (\$10,000) to repair, Subtenant may terminate this Sublease upon thirty (30) days prior written notice and upon any such termination Subtenant shall surrender the Premises in accordance with Section 18 (except for damage caused by the casualty pursuant to which the Sublease may be terminated under this Section 12.1) and both Parties shall be relieved of any liability for such termination or for repairing such damage. Except as specifically provided above, Subtenant shall, at its sole cost, promptly restore, repair, replace or rebuild the Premises to the condition the Premises were in prior to such damage or destruction, subject to any Alterations made in strict accordance with the requirements of Section 7.1 above. Under no circumstances shall Sublandlord have any obligation to repair, replace or rebuild the Premises in the event of a casualty.

**12.2. No Abatement in Rent.** In the event of any damage or destruction to the Premises, and if neither party terminates this Sublease as provided in Section 12.1 above, there shall be no abatement in the Rent payable hereunder.

**12.3. Waiver.** The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Alterations, and Sublandlord and Subtenant each hereby waives and releases any right to terminate this Sublease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

## **13. ASSIGNMENT AND SUBLETTING**

**13.1. Restriction on Assignment and Subletting.** Subtenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Subtenant), voluntarily or by operation of Law, sell, assign, encumber,

pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Alterations or its interest in this Sublease, or permit any portion of the Premises to be occupied by anyone other than itself, or sublet any portion of the Premises, without Sublandlord's prior written consent in each instance, which Sublandlord may grant or withhold in its sole and absolute discretion.

#### **14. DEFAULT; REMEDIES**

**14.1. Events of Default.** Any of the following shall constitute an event of default ("Event of Default") by Subtenant hereunder:

(a) **Failure to Pay Rent.** Any failure to pay any Rent or any other sums due hereunder, including sums due for utilities, within five (5) days after such sums are due;

(b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Sublease, provided Subtenant shall have a period of ten (10) days from the date of written notice from Sublandlord of such failure within which to cure such default under this Sublease, or, if such default is not capable of cure within such 10-day period, Subtenant shall have a reasonable period to complete such cure if Subtenant promptly undertakes action to cure such default within such 10-day period and thereafter diligently prosecutes the same to completion and uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from Sublandlord.

(c) **Vacation or Abandonment.** Any abandonment of the Premises for more than fourteen (14) consecutive days; and

(d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Subtenant, or an assignment by Subtenant for the benefit of creditors, or any action taken or suffered by Subtenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted.

**14.2. Remedies.** Upon the occurrence of an Event of Default by Subtenant, Sublandlord shall have the following rights and remedies in addition to all other rights and remedies available to Sublandlord at Law or in equity:

(a) **Terminate Sublease and Recover Damages.** The rights and remedies provided by law California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Subtenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Subtenant proves could be reasonably avoided, as computed pursuant to subsection

(b) of such Section 1951.2. Sublandlord's efforts to mitigate the damages caused by Subtenant's breach of this Sublease shall not waive Sublandlord's rights to recover unmitigated damages upon termination.

(b) **Appointment of Receiver.** The right to have a receiver appointed for Subtenant upon application by Sublandlord to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Sublandlord pursuant to this Sublease.

**14.3. Sublandlord's Right to Cure Subtenant's Defaults.** If Subtenant defaults in the performance of any of its obligations under this Sublease, then Sublandlord may at any time thereafter with three (3) days prior written notice (except in the event of an emergency as determined by Sublandlord), remedy such Event of Default for Subtenant's account and at Subtenant's expense. Subtenant shall pay to Sublandlord, as Additional Charges, promptly upon demand, all sums expended by Sublandlord, or other costs, damages, expenses or liabilities incurred by Sublandlord, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Subtenant's obligations under this Section shall survive the termination of this Sublease. Nothing herein shall imply any duty of Sublandlord to do any act that Subtenant is obligated to perform under any provision of this Sublease, and Sublandlord's cure or attempted cure of Subtenant's Event of Default shall not constitute a waiver of Subtenant's Event of Default or any rights or remedies of Sublandlord on account of such Event of Default.

## **15. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION**

**15.1. Release and Waiver of Claims.** Subtenant, on behalf of itself and Subtenant's Agents, covenants and agrees that the Indemnified Parties shall not be responsible for or liable to Subtenant for, and, to the fullest extent allowed by any Laws, Subtenant hereby waives all rights against the Indemnified Parties and releases them from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from any cause whatsoever, including without limitation, partial or complete collapse of the Premises due to an earthquake or subsidence, except only to the extent such Losses are caused exclusively by the gross negligence or willful misconduct of the Indemnified Parties (except as provided in Section 15.1(e) below). Without limiting the generality of the foregoing:

(a) Subtenant expressly acknowledges and agrees that the consideration and other sums payable hereunder does not take into account any potential liability of the Indemnified Parties for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to Subtenant's uses hereunder. Sublandlord would not be willing to enter into this Sublease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of the Indemnified Parties, and

Subtenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages and covenants not to sue the Indemnified Parties for such damages arising out of this Sublease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Subtenant pursuant to this Sublease regardless of the cause.

(b) Without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue the Indemnified Parties under any present or future Laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that Sublandlord terminates this Sublease because of such claim for inverse condemnation or eminent domain.

(c) As part of Subtenant's agreement to accept the Premises in its "As Is" condition as provided herein, and without limiting such agreement and any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Premises and any related improvements or any Laws or regulations applicable thereto or the suitability of the Premises for Subtenant's intended use.

(d) Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated, and Subtenant fully RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses and any and all claims, demands or rights against any of the Indemnified Parties under any present and future Laws, including, without limitation, any and all claims for relocation benefits or assistance from the Indemnified Parties under federal and state relocation assistance laws.

(e) Without limiting any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the Indemnified Parties decision to Sublease the Premises to the Subtenant, regardless of whether or not such decision is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties.



(f) Subtenant covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Indemnified Parties any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 15.1.

(g) In executing these waivers and releases, Subtenant has not relied upon any representation or statement other than as expressly set forth herein.

(h) Subtenant had made such investigation of the facts pertaining to these waivers and releases it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Subtenant regardless of any claims of mistake.

(i) In connection with the foregoing releases, Subtenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

Subtenant acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Subtenant realizes and acknowledges that it has agreed upon this Sublease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Sublease.

**15.2. Subtenant's Indemnity.** Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties from and against any and all Losses, expressly including but not limited to, any Losses arising out of a partial or complete collapse of the Premises due to an earthquake or subsidence, incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any damage to or destruction of any property owned by or in the custody of Subtenant or Subtenant's Agents or Subtenant's Invitees, (b) any accident, injury to or death of a person, including, without limitation, Subtenant's Agents and Subtenant's Invitees, howsoever or by whomsoever caused, occurring in, on or about the Premises (c) any default by Subtenant in the observation or performance of any of the terms, covenants or conditions of this Sublease to be observed or performed on Subtenant's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Subtenant, Subtenant's Agents or Subtenant's Invitees or any person or entity claiming through or under any of them, of the Premises or any Alterations; (e) the condition of the Premises, including the Premises, (f)

any construction or other work undertaken by Subtenant on or about the Premises whether before or during the Term of this Sublease; or (g) any acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees, or of any trespassers, in, on or about the Premises or any Alterations; except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in effect on or validly retroactive to the date of this Sublease and further except only to the extent such Losses are caused by the gross negligence and intentional wrongful acts and omissions of the Indemnified Parties. Notwithstanding the foregoing, Subtenant's obligations to indemnify the Indemnified Parties under this Section 15.2 shall remain in full force and effect regardless of whether or not the Indemnified Parties' decision to Sublease the Premises to the Subtenant, given the seismic condition of the property, is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Sublandlord's costs of investigating any Loss. Subtenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter. Subtenant's obligations under this Section shall survive the expiration or sooner termination of this Sublease. Notwithstanding anything contained herein, to the extent such Losses are not covered by insurance required herein and subject to Section 12.1 above, Subtenant shall have no obligation to repair, restore or reconstruct the Premises (or to pay for the same) in the event the Premises are damaged or destroyed by an earthquake or subsidence or by any other uninsured casualty.

## 16. INSURANCE

16.1. Subtenant's Insurance. Subtenant shall procure and maintain throughout the Term of this Sublease and pay the cost thereof the following insurance:

(a) Property Insurance. Subtenant shall procure and maintain, at its own cost, a standard fire and extended coverage insurance policy insuring the Premises, including, without limitation, the Premises and all fixtures, Alterations, furniture and equipment located thereon, in an amount not less than the full replacement value.

(b) Public Liability and Other Insurance. Subtenant shall at all times, at its cost, also maintain insurance for the mutual benefit of Sublandlord and Subtenant against:

(i) Claims for personal injury under a policy of commercial general liability insurance, including without limitation, claims for bodily injury, property damage or employer's liability occurring in or upon the Premises, in an amount not less than \$5,000,000 combined single limit. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CG-00-01-11-88.



(ii) Worker's compensation insurance with employer's liability insurance covering all persons employed and with respect to whom death or bodily injury claims could be asserted against Sublandlord, Subtenant, the Premises or any other Sublandlord property, in an amount not less than \$1,000,000 each accident.

(iii) Automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Subtenant uses automobiles in connection with its use of the Premises. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CA-00-01-06-92.

**16.2. General Requirements.** All insurance provided for under this Sublease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by Sublandlord.

(a) Should any of the required insurance be provided under a claims-made form, Subtenant shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of three (3) years beyond the expiration or termination of this Sublease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Sublease, such claims shall be covered by such claims-made policies.

(b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(c) All liability insurance policies shall be endorsed to provide the following:

(i) Cover Subtenant as the insured and the Sublandlord and the Master Landlord as additional insureds.

(ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Sublease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(iii) All policies shall be endorsed to provide thirty (30) days' advance written notice to Sublandlord of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for Sublandlord set forth in the Basic Sublease Information.

**16.3. Proof of Insurance.** Subtenant shall deliver to Sublandlord certificates of insurance in form and with insurers satisfactory to Sublandlord, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon Sublandlord's request, and Subtenant shall provide Sublandlord with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. As to the insurance required pursuant to Section 16.1(b)(1) above, such certificate shall state, among other things, that such insurance coverage includes and shall cover Subtenant's indemnity obligations under Section 15.2 above. In the event Subtenant shall fail to procure such insurance, or to deliver such policies or certificates, Sublandlord may, at its option, procure the same for the account of Subtenant, and the cost thereof shall be paid to Sublandlord within five (5) days after delivery to Subtenant of bills therefor.

**16.4. No Limitation on Indemnities.** Subtenant's compliance with the provisions of this Section shall in no way relieve or decrease Subtenant's indemnification obligations herein or any of Subtenant's other obligations or liabilities under this Sublease.

**16.5. Lapse of Insurance.** Notwithstanding anything to the contrary in this Sublease, Sublandlord may elect in Sublandlord's sole and absolute discretion to terminate this Sublease upon the lapse of any required insurance coverage by written notice to Subtenant.

**16.6. Subtenant's Personal Property.** Subtenant shall be responsible, at its expense, for separately insuring Subtenant's Personal Property.

## **17. ACCESS BY SUBLANDLORD**

### **17.1. Access to Premises by Sublandlord.**

(a) **General Access.** Sublandlord reserves for itself and Sublandlord's Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than twenty-four (24) hours oral or written notice to Subtenant (except in the event of an emergency) for any purpose.

(b) **Emergency Access.** In the event of any emergency, as determined by Sublandlord, Sublandlord may, at its sole option and without notice, enter the Premises and alter or remove any Alterations or Subtenant's Personal Property on or about the Premises. Sublandlord shall have the right to use any and all means Sublandlord considers appropriate to gain access to any portion of the Premises in an emergency. In such case, Sublandlord shall not be responsible for any damage or injury to any such property, nor for the replacement of any

such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Subtenant from the Premises or any portion thereof.

(c) **No Liability.** Sublandlord shall not be liable in any manner, and Subtenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Sublandlord's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of Sublandlord or Sublandlord's Agents and not contributed to by the acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees.

**17.2. Access to Premises by Master Landlord.** Subtenant acknowledges and agrees that Master Landlord shall have all of the rights of access to the Premises described in the Master Lease.

## **18. SURRENDER**

**18.1. Surrender of the Premises.** Upon the termination of this Sublease, Subtenant shall surrender to Sublandlord the Premises in the same condition as of the Commencement Date, ordinary wear and tear excepted, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Subtenant. On or before any termination hereof, Subtenant shall, at its sole cost, remove any and all of Subtenant's Personal Property from the Premises and demolish and remove any and all Alterations from the Premises (except for any Alterations that Sublandlord agrees are to remain part of the Premises pursuant to the provisions of Section 7.4 above). In addition, Subtenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Alterations. In connection therewith, Subtenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Subtenant's obligations under this Section shall survive the termination of this Sublease. Any items of Subtenant's Personal Property remaining on or about the Premises after the termination of this Sublease may, at Sublandlord's option and after thirty (30) days written notice to Subtenant, be deemed abandoned and in such case Sublandlord may dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law.

If Subtenant fails to surrender the Premises to Sublandlord upon the termination of this Sublease as required by this Section, Subtenant shall Indemnify Sublandlord against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Subtenant resulting from Subtenant's failure to surrender the Premises.

**18.2. Security Deposit.** Subtenant shall pay to Sublandlord upon execution of this

Sublease a security deposit in the amount of Ten Thousand Dollars (\$10,000) as security for the faithful performance of all terms, covenants and conditions of this Sublease. Subtenant agrees that Sublandlord may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises caused by Subtenant, Subtenant's Agents or Subtenant's Invitees, or any failure of Subtenant to perform any other terms, covenants or conditions contained in this Sublease, without waiving any of Sublandlord's other rights and remedies hereunder or at Law or in equity. Should Sublandlord use any portion of the security deposit to cure any Event of Default by Subtenant hereunder, Subtenant shall immediately replenish the security deposit to the original amount, and Subtenant's failure to do so within five (5) days of Sublandlord's notice shall constitute a material Event of Default under this Sublease. Sublandlord's obligations with respect to the security deposit are solely that of debtor and not trustee. Sublandlord shall not be required to keep the security deposit separate from its general funds, and Subtenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Subtenant's liability for the performance of any of its obligations under this Sublease. To the extent that Sublandlord is not entitled to retain or apply the security deposit pursuant to this Section 18.2, Sublandlord shall return such security deposit to Sublandlord within forty-five (45) days of the termination of this Sublease.

## 19. HAZARDOUS MATERIALS

19.1. No Hazardous Materials. Subtenant covenants and agrees that neither Subtenant nor any of Subtenant's Agents or Subtenant's Invitees shall cause or permit any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, including, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25201 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids ("Hazardous Material") to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises without the prior written approval of Sublandlord, which approval may be withheld in Sublandlord's sole and absolute discretion. Subtenant shall immediately notify Sublandlord if and when Subtenant learns or has reason to believe there has been any release of Hazardous Material in, on or about the Premises. Sublandlord may from time to time request Subtenant to provide adequate information for Sublandlord to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal,

discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises and any other property, including, without limitation, soil, air and groundwater conditions ("Environmental Laws"), and Subtenant shall promptly provide all such information. Sublandlord and Sublandlord's Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Subtenant (except in the event of an emergency). Without limiting the foregoing, Subtenant acknowledges and agrees that it shall be bound by and will comply with the environmental protection provisions provided for in Section 13 of the Master Lease.

**19.2. Subtenant's Environmental Indemnity.** If Subtenant breaches any of its obligations contained in Section 19.1 above, or, if any act or omission or negligence of Subtenant or any of Subtenant's Agents or Subtenant's Invitees results in any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leeching or dumping ("Release") of Hazardous Material in, on, under or about the Premises or the Property, without limiting Subtenant's general Indemnity contained in Section 15.2 above, Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties, and each of them, from and against all any and all enforcement, investigation, remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws together with any and all Losses made or threatened by any third party against Sublandlord, Sublandlord's Agents, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, Release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law, investigation and remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, the loss or restriction of the use or any amenity of the Premises and attorneys' fees and consultants' fees and experts' fees and costs ("Hazardous Materials Claims") arising during or after the Term of this Sublease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Premises or the Property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other Sublandlord property. Without limiting the foregoing, if Subtenant or any of Subtenant's Agents or Subtenant's Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or the Property, Subtenant shall, immediately, at no expense to Sublandlord, take any and all appropriate actions to return the Premises or other Sublandlord property affected thereby to the condition existing prior to such Release and otherwise investigate and remediate the Release in accordance with all Environmental Laws. Subtenant shall provide Sublandlord with written notice of and afford Sublandlord a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

**19.3. Acknowledgment of Receipt of EBS and FOSL Reports.** Subtenant hereby

acknowledges for itself and Subtenant's Agents that, prior to the execution of this Sublease, it has received and reviewed the Environmental Baseline Survey ("EBS") and the Finding of Suitability to Lease ("FOSL") described in Section 7 of the Master Lease.

## 20. GENERAL PROVISIONS

**20.1. Notices.** Except as otherwise expressly provided in this Sublease, any notice given hereunder shall be effective only in writing and given by delivering the notice in person, or by sending it first class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid as follows:

Notice Address of Sublandlord      Treasure Island Development Authority  
Treasure Island Project Office  
401 Palm Avenue  
Building 1, Room 237  
Treasure Island  
Attn: Executive Director  
Fax No.: 415-274-0662

with a copy to:                      Office of the City Attorney  
City Hall, Second Floor  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102  
Attn: Michael S. Cohen  
Fax No.: (415) 554-4755

Notice Address of Subtenant:      Island Creative Management LLC  
470 Avenue H  
Treasure Island  
San Francisco, CA 94130  
Attn: Chris Kelly  
Fax No.: 707-557-6973

Notice Address of Master Landlord:      Commanding Officer (Code 24)  
Engineering Field Activity West  
Naval Facilities Engineering Command  
900 Commodore Drive  
San Bruno, California 94066

Any Party hereunder may designate a new address for notice purposes hereunder at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one



day after the date it is made, if sent by commercial overnight carrier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section 20.1 and applicable Laws, shall be deemed receipt of such notice..

**20.2. No Implied Waiver.** No failure by Sublandlord to insist upon the strict performance of any obligation of Subtenant under this Sublease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial payment for any sums due hereunder during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of Sublandlord, shall constitute a waiver of such breach or of Sublandlord's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Sublease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Sublandlord given in any instance under the terms of this Sublease shall not relieve Subtenant of any obligation to secure the consent of Sublandlord in any other or future instance under the terms of this Sublease.

**20.3. Amendments.** Neither this Sublease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

**20.4. Authority.** If Subtenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Sublease on behalf of Subtenant does hereby covenant and warrant that Subtenant is a duly authorized and existing entity, that Subtenant has and is qualified to do business in California, that Subtenant has full right and authority to enter into this Sublease, and that each and all of the persons signing on behalf of Subtenant are authorized to do so. Upon Sublandlord's request, Subtenant shall provide Sublandlord with evidence reasonably satisfactory to Sublandlord confirming the foregoing representations and warranties. Without limiting the generality of the foregoing, Subtenant represents and warrants that it has full power to make the waivers and releases, indemnities and the disclosure set forth herein, and that it has received independent legal advice from its attorney as to the advisability of entering into a sublease containing those provisions and their legal effect.

**20.5. Joint and Several Obligations.** The word "Subtenant" as used herein shall include the plural as well as the singular. If there is more than one Subtenant, the obligations and liabilities under this Sublease imposed on Subtenant shall be joint and several.

**20.6. Interpretation of Sublease.** The captions preceding the articles and sections of

this Sublease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Sublease. This Sublease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Sublease. Provisions in this Sublease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or Sublandlord holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Sublease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of Sublandlord is required to be obtained by Subtenant hereunder, Sublandlord may give or withhold such consent in its sole and absolute discretion.

**20.7. Successors and Assigns.** Subject to the provisions of Section 13, the terms, covenants and conditions contained in this Sublease shall bind and inure to the benefit of Sublandlord and Subtenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any transfer by Sublandlord (or by any subsequent Sublandlord) of its interest in the Premises as lessee, including any transfer by operation of Law, Sublandlord (or any subsequent Sublandlord) shall be relieved from all subsequent obligations and liabilities arising under this Sublease subsequent to such transfer.

**20.8. Brokers.** Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Sublease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Sublease.

**20.9. Severability.** If any provision of this Sublease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Sublease shall be valid and be enforceable to the fullest extent permitted by Law.



**20.10. Governing Law.** This Sublease shall be construed and enforced in accordance with the Laws of the State of California and the federal government.

**20.11. Entire Agreement.** This instrument (including the exhibits hereto, which are made a part of this Sublease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Sublease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Sublease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Sublease. Subtenant hereby acknowledges that neither Sublandlord nor Sublandlord's Agents have made any representations or warranties with respect to the Premises or this Sublease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Subtenant by implication or otherwise unless expressly set forth herein. Notwithstanding the foregoing, the Parties shall make a good faith effort to negotiate mutually acceptable changes to this Sublease, if any, within ninety (90) days of the date hereof, provided however, that such changes, if any, shall be subject to the approval of the Master Landlord.

**20.12. Attorneys' Fees.** In the event that either Sublandlord or Subtenant fails to perform any of its obligations under this Sublease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Sublease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees.

**20.13. Time of Essence.** Time is of the essence with respect to all provisions of this Sublease in which a definite time for performance is specified.

**20.14. Cumulative Remedies.** All rights and remedies of either party hereto set forth in this Sublease shall be cumulative, except as may otherwise be provided herein.

**20.15. Survival of Indemnities.** Termination of this Sublease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Sublease, nor shall it affect any provision of this Sublease that expressly states it shall survive termination hereof. Subtenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Sublease, Subtenant has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter.

**20.16. Relationship of Parties.** Sublandlord is not, and none of the provisions in this Sublease shall be deemed to render Sublandlord, a partner in Subtenant's business, or joint

venturer or member in any joint enterprise with Subtenant. This Sublease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Sublease by Sublandlord does not constitute authorization or approval by Sublandlord of any activity conducted by Subtenant on, in or relating to the Premises.

**20.17. Recording.** Subtenant agrees that it shall not record this Sublease nor any memorandum or short form hereof in the official records of any county.

**20.18. Non-Liability of Indemnified Parties' officials, employees and Agents.** No elective or appointive board, commission, member, officer or employee of any of the Indemnified Parties shall be personally liable to Subtenant, its successors and assigns, in the event of any default or breach by Sublandlord or for any amount which may become due to Subtenant, its successors and assigns, or for any obligation of Sublandlord under this Agreement.

**20.19. No Discrimination.** Subtenant shall comply with the non-discrimination provisions of Section 19.1 of the Master Lease, including, without limitation, posting all notices required therein.

**20.20. Counterparts.** This Sublease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**20.21. Master Landlord's Consent.** This Sublease is expressly conditioned upon receipt of the written consent of Master Landlord

## **21. SPECIAL PROVISIONS**

**21.1. Signs.** Subtenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from public corridors or other portions of any common areas of the Premises or from the exterior of the Premises, without Sublandlord's prior written consent, which Sublandlord may withhold or grant in its sole discretion.

**21.2. Public Transit Information.** Subtenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Subtenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Premises and encouraging use of such facilities, all at Subtenant's sole expense.

**21.3. Non-Discrimination.**

(a) Covenant Not to Discriminate. In the performance of this Sublease, Subtenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with, Subtenant in any of Subtenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Subtenant.

(b) Subleases and Other Subcontracts. Subtenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such Subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Subtenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all Subtenants and other subcontractors to comply with such provisions. Subtenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Sublease.

(c) Non-Discrimination in Benefits. Subtenant does not as of the date of this Sublease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) HRC Form. Subtenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC").

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Subtenant shall comply fully with and be bound by all of the provisions that apply to this Sublease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters.

Without limiting the foregoing, Subtenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Sublease may be assessed against Subtenant and/or deducted from any payments due Subtenant.

**21.4. No Relocation Assistance; Waiver of Claims.** Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated or expires by its own terms, and Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, Sublandlord, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from Sublandlord under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Sublease with respect to a Taking.

**21.5. MacBride Principles - Northern Ireland.** The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Subtenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

**21.6. Tropical Hardwood Ban.** The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product.

**21.7. Conflicts of Interest.** Subtenant states that it is familiar with the provisions of Section 8.105 and 8.106 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Subtenant further certifies that it has made a complete disclosure to the Sublandlord of all facts bearing on any possible interests, direct or indirect, which Subtenant believes any officer or employee of the Sublandlord presently has or will have in this Sublease or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant to make such disclosure, if any, shall constitute grounds for the Sublandlord's termination and cancellation of this Sublease.

**21.8. Burma (Myanmar) Business Prohibition.** Subtenant is not the government of Burma (Myanmar), a person or business entity organized under the laws of Burma (Myanmar) or a "prohibited person or entity" as defined in Section 12J.2(G) of the San Francisco Administrative Code. Sublandlord reserves the right to terminate this Sublease for default if Subtenant violates the terms of this clause. Chapter 12J of the San Francisco Administrative Code is hereby incorporated by reference as though fully set forth herein. The failure of

Subtenant to comply with any of its requirements shall be deemed a material breach of this Sublease. In the event Subtenant fails to comply in good faith with any of the provisions of Chapter 12J of the San Francisco Administrative Code, Subtenant shall be liable for liquidated damages for each violation in an amount equal to Subtenant's net profit under this Sublease, or 10% of the total amount of the Sublease, or \$1,000, whichever is greatest. Subtenant acknowledges and agrees the liquidated damages assessed shall be payable to the Sublandlord upon demand and may be setoff against any moneys due to the Subtenant from this Sublease.

**21.9. Prevailing Wages for Construction Work.** Subtenant agrees that to the extent any person performing labor in the construction of the Alterations required under Section 7 [Alterations] is paid wages for such labor, such person shall be paid not less than the highest prevailing rate of wages and that Subtenant shall include, in any contract for construction of such improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Subtenant further agrees that, as to the construction of such improvements under this Sublease, Subtenant shall comply with all the provisions of subsection (b) of San Francisco Charter Section A7.204 and Sections 6.33 through 6.45 of the San Francisco Administrative Code that relate to payment of prevailing wages. Subtenant shall require any contractor to provide, and shall deliver to Sublandlord every two weeks during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any of the required alterations.

**21.10. Prohibition of Tobacco Advertising.** Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the Authority or the City, including the Premises and the Property. This prohibition includes the placement of the name of a company producing selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

Sublandlord and Subtenant have executed this Sublease in triplicate as of the date first written above.

**SUBTENANT:**

Island Creative Management  
a Limited Liability Corporation

By:

Its:



**SUBLANDLORD:**

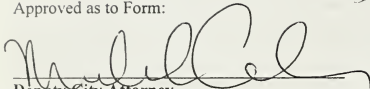
**Treasure Island Development Authority**

By: \_\_\_\_\_

Its: \_\_\_\_\_

ANNEMARIE CONROY  
Executive Director  
Treasure Island Development  
Authority Project

Approved as to Form:

  
Deputy City Attorney



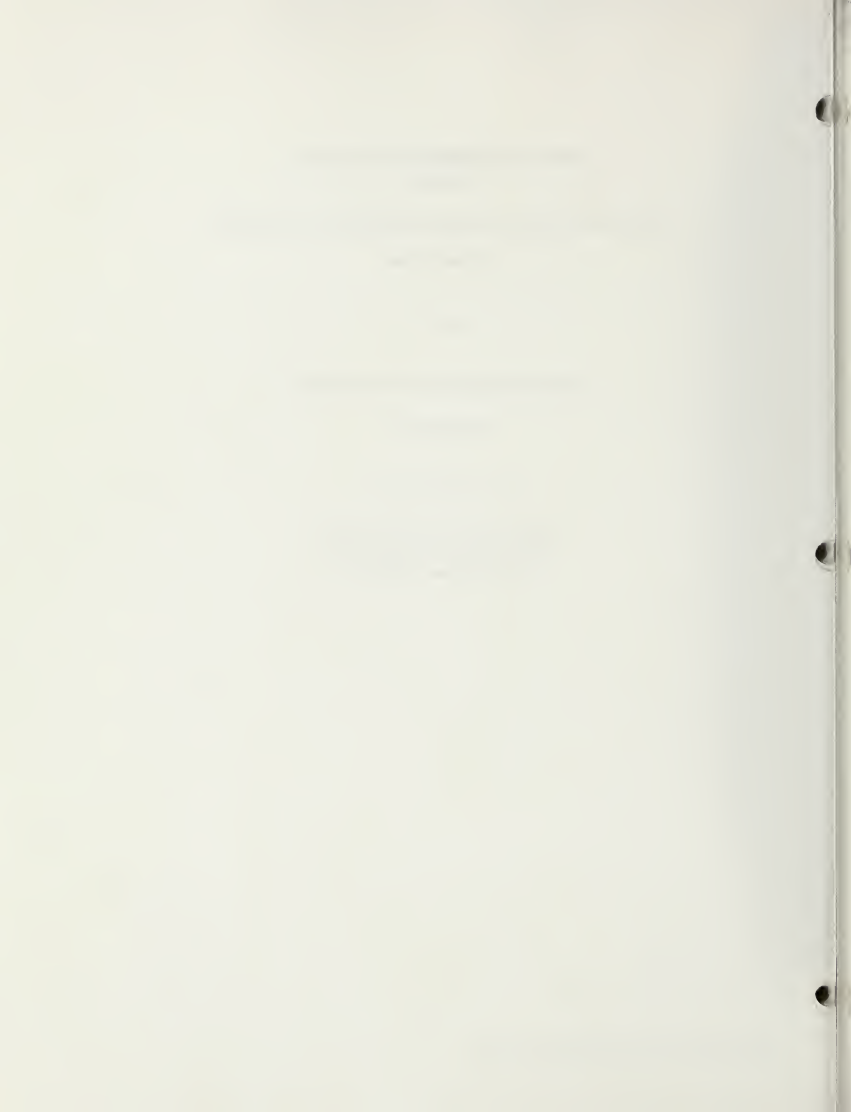
80000 SERIES  
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**FIRST AMENDMENT TO SUBLEASE**  
**between**  
**THE TREASURE ISLAND DEVELOPMENT AUTHORITY**  
**as Sublandlord**  
  
**and**  
  
**ISLAND CREATIVE MANAGEMENT**  
**as Subtenant**

**For the Sublease of**  
**10,500 square feet in Building 99**  
**at Naval Station Treasure Island**  
**San Francisco, California**



## FIRST AMENDMENT TO TREASURE ISLAND SUBLEASE

THIS FIRST AMENDMENT TO SUBLEASE (the "First Amendment"), dated as of this 21<sup>st</sup> day of August 2000, is by and between the Treasure Island Development Authority ("Sublandlord") and Island Creative Management ("Subtenant")

This Sublease is made with reference to the following facts and circumstances:

A. Subtenant and Sublandlord entered into that certain sublease, dated September 1, 1999 (the "Original Sublease", and as amended by this First Amendment to the "Sublease"), for the use and occupancy of portions of Building 99 located on Treasure Island, all as more particularly shown on the map attached to the Original Sublease as Exhibit B (the "Original Premises").

B. Subtenant and Sublandlord desire to amend the Original Sublease to expand the Original Premises and increase the rent due and owing therefor.

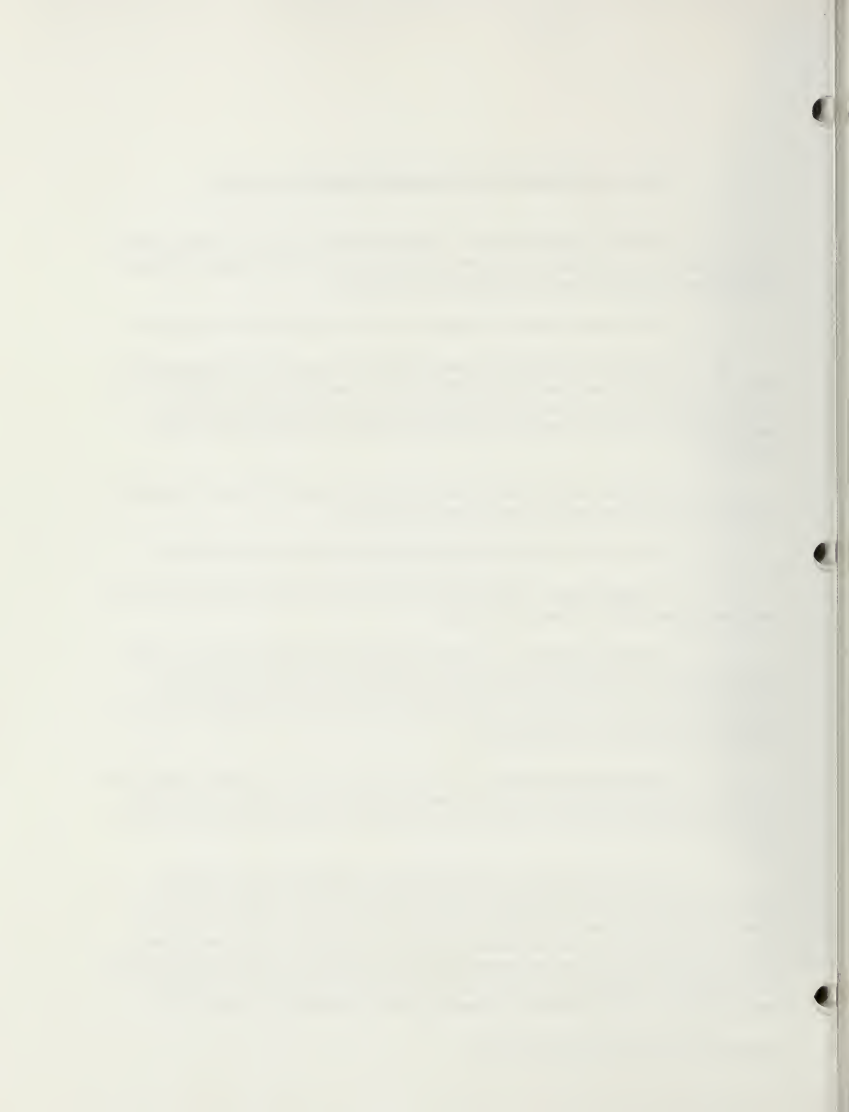
NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

1. Defined Terms. Capitalized terms not separately defined herein shall have the same meaning provided in the Original Sublease.

2. Expansion Premises. The Original Premises described in Section 1.1 of the Original Sublease are hereby amended to include, in addition to the 6,000 square feet of the Original Premises, an additional 4,500 square feet, for a total of 10,500 square feet within Building 99, all as shown on Exhibit A attached hereto (the "Expansion Premises", and together with the Original Premises, the "Premises").

3. Base Rent for Premises. As of the date of this First Amendment, the Base Rent for the Premises under the Sublease, including the Expansion Premises, shall be increased from Six Thousand Dollars (\$6,000) per month to Ten Thousand Five Hundred Dollars (\$10,500) per month.

4. Terms and Conditions of Original Sublease Remain in Force and Effect. Except as specifically amended hereby, the terms and conditions of the Original Sublease, as amended by this First Amendment, shall remain in full force and effect. Without limiting the generality of the foregoing and notwithstanding anything contained in this First Amendment, Subtenant acknowledges and agrees that the Sublease is currently on a month-to-month basis and continuation of the Sublease on a month-to-month basis beyond September 1, 2000 requires the Board of Directors of the Sublandlord to approve a resolution extending the Term of this



Sublease beyond such date.

5. Counterparts. This First Amendment may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

Sublandlord and Subtenant have executed this First Amendment as of the date first written above.

SUBTENANT:

ISLAND CREATIVE MANAGEMENT

By: 

Its: General Partner


SUBLANDLORD:

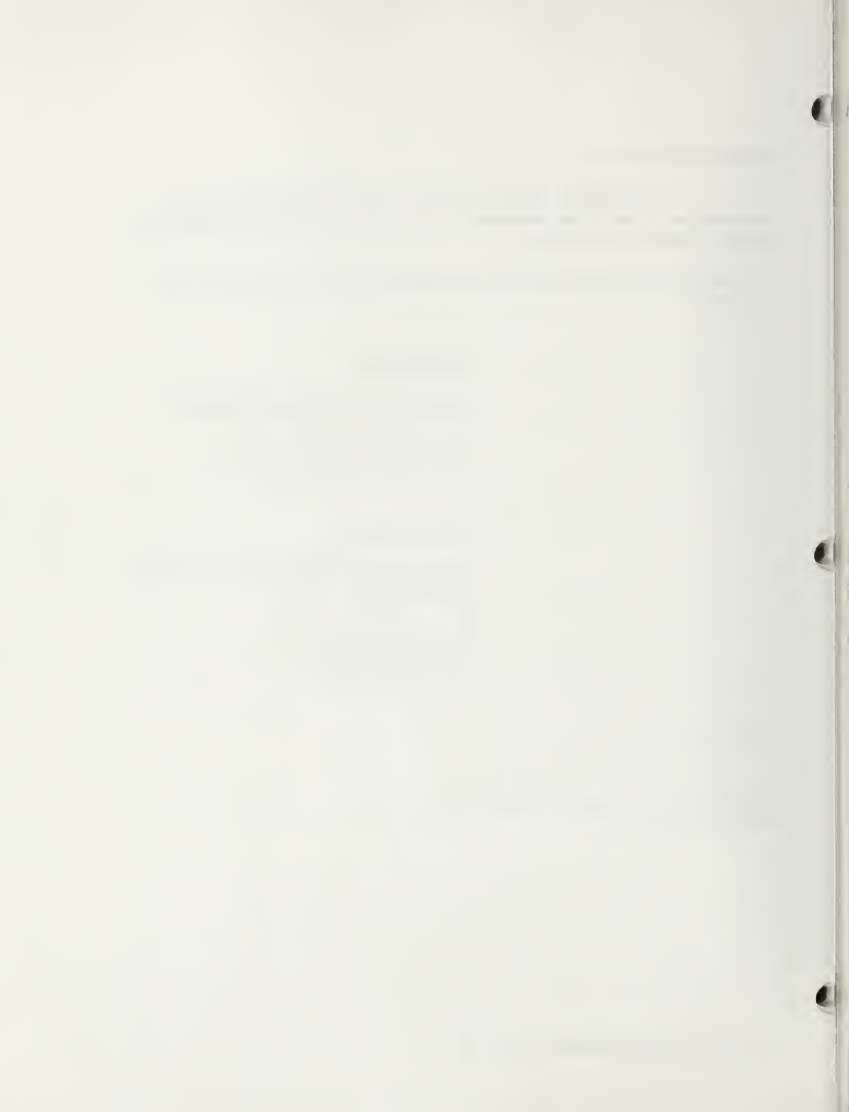
THE TREASURE ISLAND DEVELOPMENT  
AUTHORITY

By: 

Annemarie Conroy  
Its: Executive Director

Approved as to Form:

  
Deputy City Attorney









**TREASURE ISLAND DEVELOPEMNT AUTHORITY**  
**City and County of San Francisco**

**Agenda Item No. 10**

**March 14, 2001**

---

**Subject:** Resolution authorizing the Authority to extend a month-to-month sublease with W Wong Construction for Building 62 for a period not to exceed 12 months

**Staff Contact:** London Breed, Development Specialist 274-0665

**SUMMARY OF PROPOSED ACTION**

Staff requests the Authority to adopt a resolution to continue a month-to-month sublease with W Wong Construction for the use of Building 62 on the same terms as the original sublease dated July 1, 1999 for an additional period not to exceed 12 months.

**DICUSSION**

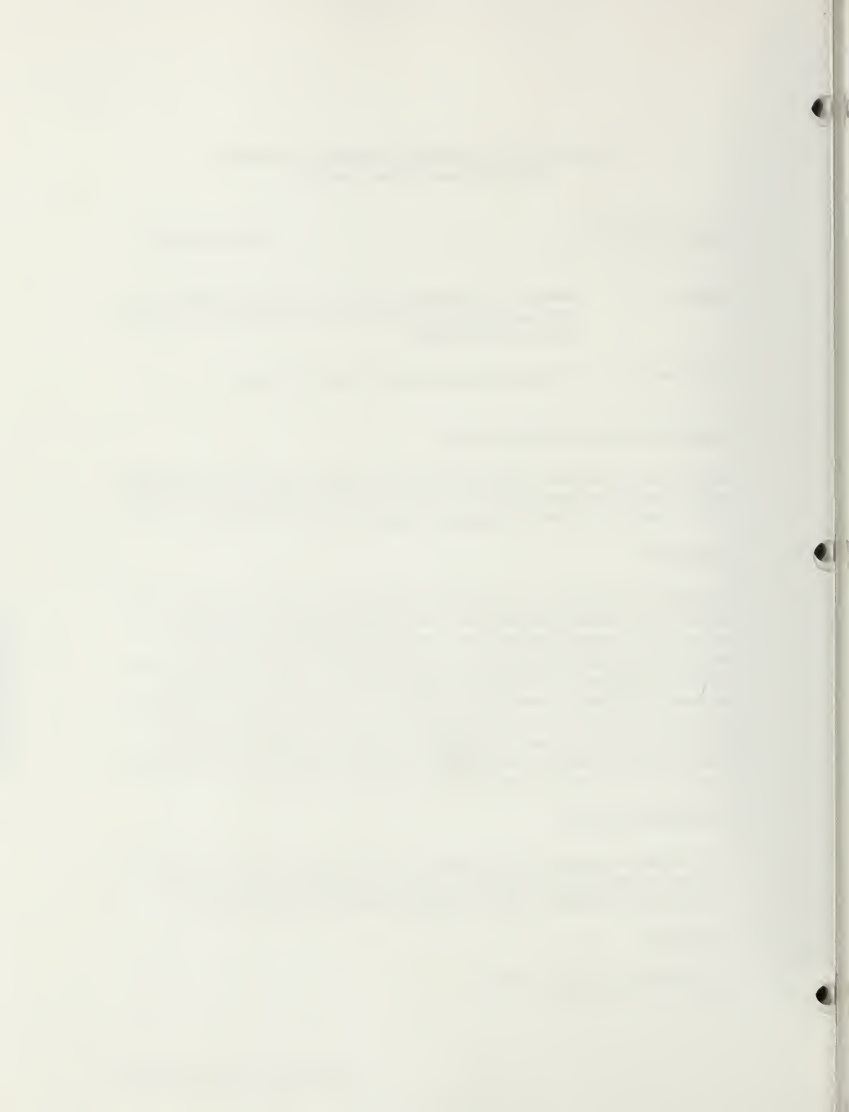
The sublease provides for use of a portion of Building 62 by W Wong Construction for storage of office-related equipment, files, and records and for no other purpose. The subtenant does not permit any persons to enter or occupy the premises, except for periodic access to the materials stored in the premises, as provided in section 6.2 of the sublease. On February 9, 2000 and September 13, 2000, the Authority approved an extension in each case for an additional six months. The project office is requesting an extension for an additional one-year. The monthly base rent is two thousand dollars (\$2,000.00) for the use of space in Building 62. Under the Authority's Rules and Procedures for the transfer of Real Property, continuation of this Sublease on a month-to-month basis for an additional one-year term requires Authority approval.

**RECOMMENDATION**

Staff recommends approval for the Authority to continue a month-to-month sublease with W Wong Construction for an additional twelve months. Further continuation of the sublease beyond February 28, 2002 would require additional Authority approval.

**EXHIBITS**

Original Sublease dated July 1, 1999



1 [Continuation of Month-to-Month Sublease of Building 62]

2 AUTHORIZING THE EXECUTIVE DIRECTOR TO EXTEND A MONTH-TO-MONTH  
3 SUBLEASE FOR BUILDING 62 WITH W. WONG CONSTRUCTION COMPANY INC. FOR A  
4 PERIOD NOT TO EXCEED 12 MONTHS

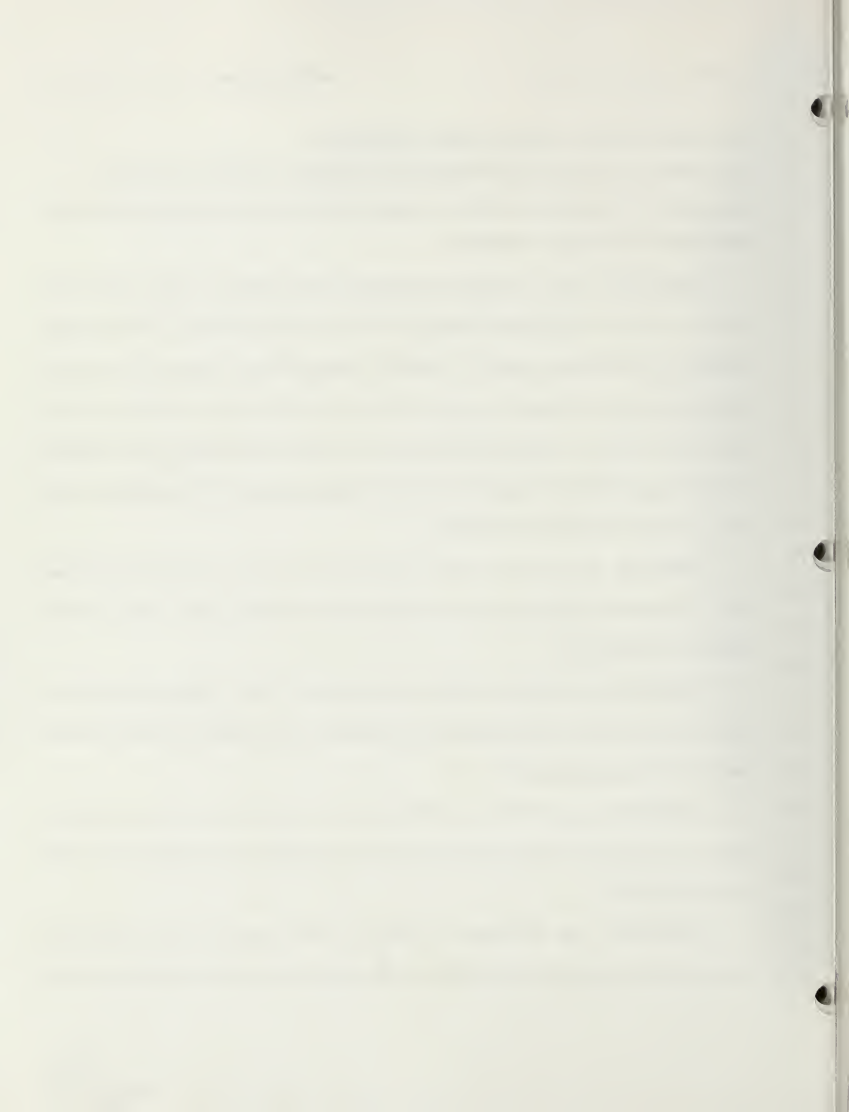
5 **WHEREAS**, on July 1, 1999, the Authority's Executive Director, acting under Section  
6 10 of the Authority's Rules and Procedures for the Transfer and Use of Real Property,  
7 adopted by the Authority on March 11, 1998 (the "Transfer Rules"), entered into a month-to-  
8 month sublease (the "Sublease"), a copy of which is attached hereto as Exhibit A, with W.  
9 Wong Construction Inc. ("Subtenant") for the use of a portion of Building 62 (the "Premises")  
10 for the storage of files and records and office related equipment, at a rental rate of Two  
11 Thousand Dollars (\$2,000) per month; and  
12

13 **WHEREAS**, under Section 10 of the Transfer Rules, even a month-to-month sublease  
14 has to be separately approved by the Authority if the cumulative term of such sublease  
15 exceeds six months; and  
16

17 **WHEREAS**, on February 9, 2000 and September 13, 2000, the Board of Directors of  
18 the Authority approved and authorized the continuation of the Sublease on a month-to-month  
19 basis for another six months; and  
20

21 **WHEREAS**, the approved six month extension has expired, and Subtenant wishes to  
22 continue to occupy the Premises under the Sublease for at least another twelve (12) months;  
23 now therefore be it  
24

25 **RESOLVED:** That the Board of Directors hereby approves and authorizes the  
continuation of the Sublease on a month-to-month basis for up to another twelve (12) months,

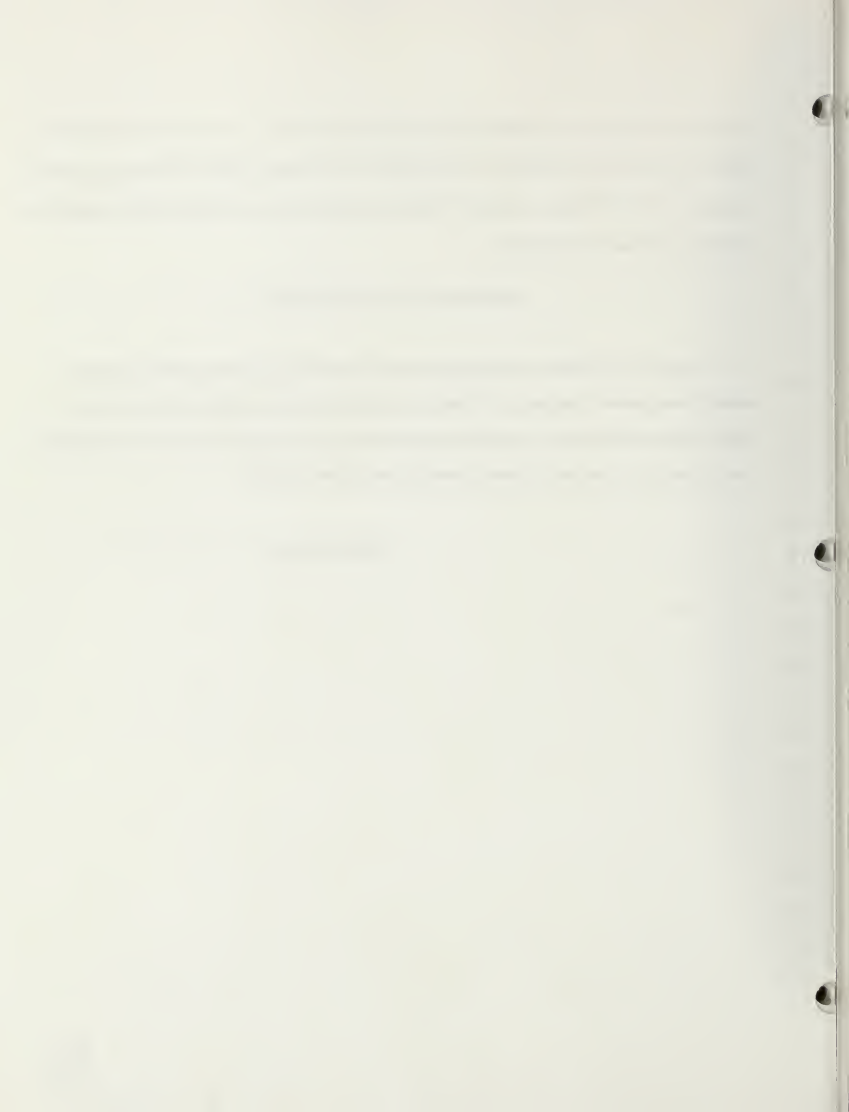


1 provided that nothing herein shall limit the Authority's ability to terminate the Sublease on  
2 thirty days notice as provided in the Sublease and provided further that any continued  
3 occupancy of the Premises under the Sublease past February 28, 2002 shall require the  
4 separate approval of the Authority.

5  
6 **CERTIFICATE OF SECRETARY**

7  
8 I hereby certify that I am the duly elected and acting Secretary of the Treasure  
9 Island Development Authority, a California nonprofit public benefit corporation, and  
10 that the above Resolution was duly adopted and approved by the Board of Directors of  
11 the Authority at a properly noticed meeting on March 14, 2001.

12  
13 \_\_\_\_\_  
14 John Elberling  
15  
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**SUBLEASE**

**between**

**THE TREASURE ISLAND DEVELOPMENT AUTHORITY**

**as Sublandlord**

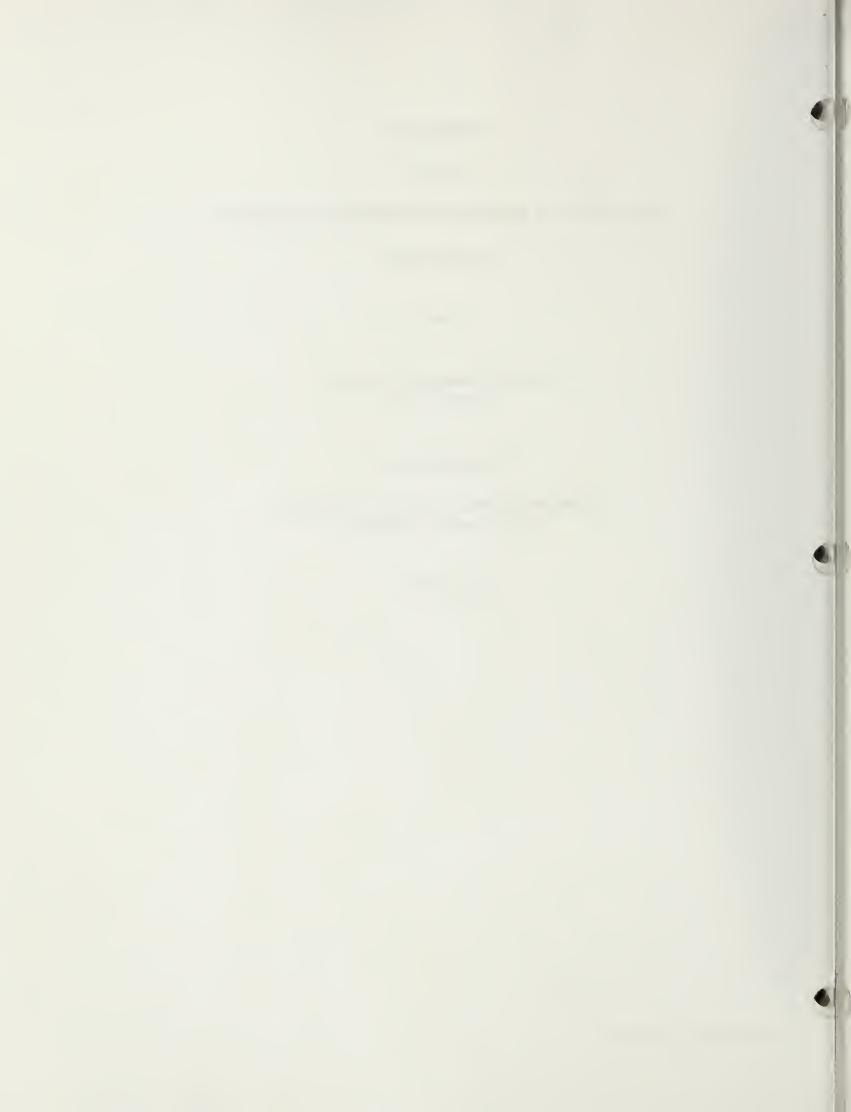
**and**

**W Wong Construction Co., Inc.  
as Subtenant**

**For the Sublease of**

**Building 62 at Treasure Island Naval Station  
San Francisco, California**

**July 1, 1999**



## TREASURE ISLAND SUBLEASE

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**LIST OF EXHIBITS:**

EXHIBIT A -- Master Lease  
EXHIBIT B -- Drawing of Premises  
EXHIBIT C -- Seismic Report  
EXHIBIT D -- Rules and Regulations  
EXHIBIT E -- Utilities

## TREASURE ISLAND SUBLEASE

THIS SUBLEASE (the "Sublease"), dated for reference purposes only as of July 1, 1999, is by and between the Treasure Island Development Authority ("Sublandlord" or "Authority") and W. Wong Construction Co., Inc., a California corporation ("Subtenant"). From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Sublease is made with reference to the following facts and circumstances:

A. The United States of America, acting by and through the Department of Navy ("Master Landlord") and Sublandlord entered into a lease (the "Master Lease"), a copy of which is attached hereto as Exhibit A, under which the Master Landlord leased to Sublandlord Building 62 (the "Building") located on Naval Station Treasure Island (the "Property"), together with a non-exclusive right to use certain parking adjacent to the Building, but no other (the "Parking"), all as more particularly shown on Exhibit B attached hereto (together, the "Premises").

B. Subtenant desires to sublet all of the Premises from Sublandlord and Sublandlord is willing to sublet the Premises to Subtenant on the terms and conditions contained in this Sublease.

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

### **1. PREMISES**

1.1. Subleased Premises. Subject to the terms, covenants and conditions of this Sublease, Sublandlord subleases to Subtenant the Premises, including the improvements thereon and the non-exclusive right to use the Parking, all as shown on Exhibit B.

### **1.2. As Is Condition of Premises.**

(a) Inspection of Premises. Subtenant represents and warrants that Subtenant has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them, ("Subtenant's Agents") of the Premises and the suitability of the Premises for Subtenant's intended use. Subtenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises are suitable for its operations and intended uses. As part of its inspection of the Premises, Subtenant acknowledges its receipt and review of the Seismic Report and the Structural Report referenced in Section 1.2(c) below and the Joint Inspection

Report referenced in Section 6 of the Master Lease. Subtenant further represents and acknowledges that Subtenant has conducted independent investigations by qualified professionals which determined that the load bearing capacity of the floors in the Building are sufficient to support the materials to be stored therein pursuant to this Sublease.

(b) **As Is; Disclaimer of Representations.** Subtenant acknowledges and agrees that the Premises are being subleased and accepted in their "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties, including without limitation the orders and citations of any regulatory authority with jurisdiction over life and safety issues concerning the Premises ("Laws") governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Sublease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Subtenant acknowledges and agrees that neither Sublandlord nor any of its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns ("Sublandlord's Agents") have made, and Sublandlord hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, the matters described in the Seismic Report (as defined below) (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the feasibility, cost or legality of constructing any Alterations on the Premises if required for Subtenant's use and/or otherwise permitted under this Sublease, (v) the safety of the Premises, whether for the use of Subtenant or any other person, including Subtenant's Agents or Subtenant's clients, customers, vendors, invitees, guests, members, licensees, assignees or subtenants ("Subtenant's Invitees"), or (vi) any other matter whatsoever relating to the Premises or their use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(c) **Seismic Report.** Without limiting Section 1.2 (b) above, Subtenant expressly acknowledges for itself and Subtenant's Agents that it received and read that certain report dated August 1995, entitled "*Treasure Island Reuse Plan: Physical Characteristics, Building and Infrastructure Conditions,*" prepared for the Office of Military Base Conversion, Department of City Planning, and the Redevelopment Agency of the City and County of San Francisco, (the "Seismic Report"), a copy of the cover page of which is attached hereto as Exhibit C. Subtenant has had an adequate opportunity to review the Seismic Report with expert consultants of its own choosing. The Seismic Report, among other matters, describes the conditions of the soils on the Property and affecting the Building and points out that in the area of the Property where the Premises are located, an earthquake of magnitude 7 or greater is likely to cause the ground under and around the Premises to spread laterally to a distance of ten (10) or

more feet and/or result in other risks. In that event, there is a significant risk that the Building and any other structures or improvements located on or about the Premises, may fail structurally and collapse.

## **2. COMPLIANCE WITH MASTER LEASE**

**2.1. Incorporation by Reference.** All of the terms and conditions of the Master Lease are hereby incorporated by reference into this Sublease as if fully set forth herein

**2.2. Conflict.** If any of the provisions of this Sublease conflict with any portion of the Master Lease as incorporated herein, then for purposes of determining the rights and obligations of the Sublandlord and the Subtenant insofar as they relate to one another, the terms of the Master Lease shall govern.

**2.3. Compliance with Master Lease.** Subtenant shall not do or permit to be done anything which would constitute a violation or a breach of any of the terms, conditions or provisions of the Master Lease or which would cause the Master Lease to be terminated or forfeited by virtue of any rights of termination reserved by or vested in the Master Landlord. Subtenant shall cooperate with Sublandlord as may be required to obtain from Master Landlord any work, services, repairs, repainting, restoration, the provision of utilities, ventilation or air-conditioning services, or the performance of any of Sublandlord's or Master Landlord's obligations under the Master Lease.

**2.4. Automatic Termination.** If the Master Lease terminates for any reason whatsoever, this Sublease shall automatically terminate and the Parties shall thereafter be relieved from all liabilities and obligations under this Sublease, except for liabilities and obligations which expressly survive termination of this Sublease. Subtenant acknowledges and agrees that it has reviewed the Master Lease, is aware of the circumstances upon which the Master Lease may be terminated and hereby assumes all risks associated with the automatic termination of this Sublease because of the termination of the Master Lease.

## **3. TERM**

**3.1. Term of Sublease.** The term of this Sublease shall commence on July 1, 1999 (the "Commencement Date") and continue on a month-to-month basis until either party elects, in its respective sole and absolute discretion, to terminate this Sublease by giving the other party at least thirty (30) days written notice, unless sooner terminated pursuant to the terms of this Sublease. Notwithstanding the foregoing, the Sublease shall not extend beyond December 31, 1999 and Subtenant may not hold over or otherwise occupy the Premises beyond such date.

**3.2. Effective Date.** This Sublease shall become effective on the date (the "Effective Date") upon which the Parties hereto have duly executed and delivered this Sublease.

#### 4. RENT

4.1. **Base Rent.** Throughout the Term, beginning on the Commencement Date, Subtenant shall pay to Sublandlord Two Thousand Dollars (\$2,000.00) per month (the "Base Rent"). Base Rent shall be paid to the Sublandlord without prior demand and without any deduction, setoff, or counterclaim whatsoever. Base Rent shall be payable on or before the first day of each month, in advance, at the Notice Address of Sublandlord provided in Section 20.1 hereof or such other place as Sublandlord may designate in writing. If the Commencement Date occurs on a date other than the first day of a calendar month, or the Sublease terminates on a day other than the last day of a calendar month, then the monthly payment of Base Rent for such fractional month shall be prorated based on a thirty (30) day month.

4.2. **Additional Charges.** In addition to Base Rent, Subtenant shall pay any and all real property taxes, possessory interest taxes and other costs, impositions and expenses related to Subtenant's use of the Premises, plus all other charges related to the Premises otherwise payable by Subtenant to Sublandlord hereunder, including, without limitation, all late charges and default interest attributable to late payments and/or defaults of Subtenant hereunder and all utility charges (together, the "Additional Charges"). Together, Base Rent and Additional Charges shall hereinafter be referred to as the "Rent".

4.3. **Late Charge.** If Subtenant fails to pay any Rent within ten (10) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by Sublandlord and Subtenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that Sublandlord will incur as a result of any such failure by Subtenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate Sublandlord for its damages resulting from such failure to pay and Subtenant shall promptly pay such charge to Sublandlord together with such unpaid amount.

4.4. **Default Interest.** If any Rent is not paid within ten (10) days following the due date, such unpaid amount shall bear interest from the due date until paid at the rate of the greater of the ten percent (10%) or the interest rate in effect which has been established by the Secretary of Treasury pursuant to Public Law, as described in Section 32 of the Master Lease. However, interest shall not be payable on late charges incurred by Subtenant nor on any amounts on which late charges are paid by Subtenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Subtenant.

#### 5. TAXES, ASSESSMENTS AND OTHER EXPENSES



### **5.1. Taxes and Assessments, Licenses, Permit Fees and Liens.**

(a) **Payment Responsibility.** Subtenant shall pay any and all real and personal property taxes, including, but not limited to, possessory interest taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Alterations, Subtenant's Personal Property, or Subtenant's use of the Premises or any Alterations during the Term. Subtenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which Sublandlord receives the tax bill directly from the taxing authority, Subtenant shall reimburse Sublandlord for payment of such sums immediately upon demand.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Subtenant recognizes and agrees that this Sublease may create a possessory interest subject to property taxation and that Subtenant may be subject to the payment of property taxes levied on such interest.

(c) **No Liens.** Subtenant shall not allow or suffer a lien for any taxes payable by Subtenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without discharging the same as soon as practicable, and in no event subsequent to delinquency.

(d) **Reporting Information.** Subtenant agrees to provide such information as Sublandlord may request to enable Sublandlord to comply with any possessory interest tax reporting requirements applicable to this Sublease.

5.2. **Evidence of Payment.** Subtenant shall, upon Sublandlord's request, furnish to Sublandlord within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to Sublandlord, evidencing payment thereof.

5.3. **Other Expenses.** This is a "triple net" Sublease. Accordingly, Subtenant shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Alterations permitted thereon, including, without limitation, the cost of any utilities, maintenance or services necessary for Subtenant's use.

## **6. USE; COVENANTS TO PROTECT PREMISES**

6.1. **Subtenant's Permitted Use.** Subtenant may use the interior of the Building located on the Premises for storage of files and records and office related equipment only, and for no other purpose. BECAUSE OF CONCERNS REGARDING POTENTIAL SEISMIC

HAZARDS RELATED TO THE STRUCTURAL CONDITION OF THE PREMISES, SUBTENANT SHALL NOT PERMIT ANY PERSONS TO ENTER OR OCCUPY THE PREMISES, EXCEPT FOR PERIODIC ACCESS TO THE MATERIALS STORED IN THE PREMISES, AS PROVIDED IN SECTION 6.2 BELOW. Subtenant may use the parking areas described on Exhibit B for parking only. Any other use of such parking area is strictly prohibited.

**6.2. Subtenant's Access to the Premises.** Subtenant may not occupy the Premises. Subtenant will have access to the Premises only to add and remove materials contained therein and to ensure that such materials remain stored in a reasonably satisfactory condition. Subtenant may not perform any work on or related to such materials within the Premises, including, without limitation, any substantial review or cataloging of such materials.

**6.3. Rules and Regulations.** Subtenant agrees to adhere to all rules and regulations regarding the Premises attached hereto as Exhibit D, and any additional rules regarding security, ingress, egress, safety and sanitation applicable to the Premises or the Property, as such rules and regulations may be prescribed by Master Landlord or Sublandlord from time to time and which are provided to Subtenant in advance of the enforcement thereof.

**6.4. Easements.** This Sublease shall be subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Premises or any portion thereof, and to the right of Master Landlord to grant such additional easements and rights-of-way over, across, in and upon the Premises as Master Landlord shall determine to be in the public interest ("Additional Easements"), provided that, as provided in Section 28 of the Master Lease, Master Landlord shall use its best efforts to minimize any interference with Subtenant's operations hereunder caused by the granting of any such Additional Easements and the granting of such Additional Easements shall be conditioned on the assumption by the grantee thereof of liability to Subtenant for such damages as Subtenant shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such Additional Easements as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities.

**6.5. No Interference with Navy Operations.** Subtenant shall not conduct operations, nor make any Alterations (as defined below), that would interfere with or otherwise restrict Master Landlord's operations or environmental clean-up or restoration actions by the Master Landlord, Sublandlord, the Environmental Protection Agency, the State of California or their contractors. Environmental clean-up, restoration or testing activities by these Parties shall take priority over the Subtenant's use of the Premises in the event of any conflict, provided, however,

in such event, Master Landlord and Sublandlord shall use their best efforts to minimize any disruption of Subtenant's operations hereunder.

**6.6. No Unlawful Uses, Nuisances or Waste.** Without limiting the foregoing, Subtenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Subtenant shall take all precautions to eliminate any nuisances or hazards relating to its activities on or about the Premises. Subtenant shall not conduct any business, place any sales display, or advertise in any manner in areas outside the Premises or on or about the Property.

## **7. ALTERATIONS**

**7.1. Alterations.** Subtenant shall not construct, install, make or permit to be made any alterations, installations or additions in, to or about the Premises (together, the "Alterations") without Sublandlord's prior written consent in each instance, which consent may given or withheld in Sublandlord's sole and absolute discretion. Subject to Sublandlord's consent as provided above, any Alterations shall be done at Subtenant's sole expense (i) in strict accordance with plans and specifications approved in advance by Sublandlord in writing, (ii) by duly licensed and bonded contractors or mechanics approved by Sublandlord, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that Sublandlord may reasonably impose. In no event shall the construction, installation or the making of any Alterations impair the use or operation of the Property, or any portion thereof, or Sublandlord's or Master Landlord's access thereto. Prior to the commencement of any work on the Premises to construct any Alterations, Subtenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to Sublandlord. No material change from the plans and specifications approved by Sublandlord may be made without Sublandlord's prior consent. Sublandlord and Sublandlord's Agents shall have the right to inspect the course of such construction at all times.

**7.2. Historic Properties.** Without limiting the generality of the foregoing, Subtenant acknowledges and agrees that, pursuant to Section 15 of the Master Lease, no Alterations may be made to the Building (i) which will affect the historic characteristics of the Building or modify the appearance of the exterior of the Building without Master Landlord's and Sublandlord's prior written consent or (ii) if such Alterations would preclude qualifying the Building for inclusion on the National Register for Historic places.

**7.3. Ownership of Alterations.** Any Alterations constructed on or affixed to the Premises by or on behalf of Subtenant pursuant to the terms and limitations of this Section 7 shall be and remain Subtenant's property during the Term. Upon the termination of this Sublease, Subtenant shall remove all such Alterations from the Premises in accordance with the provisions of Section 18 hereof, unless Sublandlord, at its sole option and without limiting any of the

provisions of this Section 7, requires as a condition to approval of any such Alterations that such Alterations remain on the Premises following the expiration or termination of this Sublease or unless Sublandlord as a condition of such approval reserves the right to elect by notice to Subtenant not less than fifteen (15) days prior to the end of the Term to have such Alterations remain on the Premises.

**7.4. Subtenant's Personal Property.** All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by or for the account of Subtenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Subtenant's Personal Property") shall be and remain the property of Subtenant and may be removed by it subject to the provisions of Section 18 hereof.

**7.5. Sublandlord's Alterations of the Building and Building Systems.** Sublandlord reserves the right at any time to make alterations, additions, repairs, deletions or improvements to the common areas or any other part of the Building or the Building Systems, provided that any such alterations or additions shall not materially adversely affect the functional utilization of the Premises for purposes stated herein.

## **8. REPAIRS AND MAINTENANCE**

**8.1. Subtenant Responsible for Maintenance and Repair.** Subtenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises from and after the Commencement Date and shall keep the Premises in good condition and repair. Sublandlord shall not be responsible for the performance of any repairs, changes or alterations to the Premises, nor shall Sublandlord be liable for any portion of the cost thereof. Subtenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, which may be necessary to maintain the Premises at all times in clean, safe, attractive and sanitary condition and in good order and repair, to Sublandlord's and Master Landlord's reasonable satisfaction, provided, however, that neither Subtenant nor Sublandlord shall be required to make structural repairs or Alterations to correct conditions affecting the Premises existing prior to the Commencement Date or in the event the Premises are damaged or destroyed by an earthquake or subsidence or by any other uninsured casualty not caused by Subtenant. If any portion of the Premises is damaged by any activities conducted by Subtenant or Subtenant's Agents or Subtenant's Invitees hereunder, Subtenant shall immediately, at its sole cost, repair all such damage and restore the Premises to its previous condition.

**8.2. Utilities.** Sublandlord shall provide the basic building utilities and services described in Exhibit E, (the "Standard Utilities and Services") to the Premises, subject to the terms and conditions contained therein. Subtenant shall be responsible for furnishing, at its sole costs, any utilities or services other than or in excess of the Standard Utilities and Services that Subtenant may need for its use of the Premises. Subtenant shall pay as Additional Charges,

without set off or counterclaim, all amounts due and owing for such Standard Utilities and Services at the rates provided in and as otherwise set forth in Exhibit E.

**8.3. Floor Load.** Without Sublandlord's prior written consent, which Sublandlord may give or refuse in its sole discretion, Subtenant shall not place or install in the Premises any equipment that weighs in excess of the normal load-bearing capacity of the floors of the Building. If Sublandlord consents to the placement or installation of any such machine or equipment in the Premises, Subtenant at its sole expense shall reinforce the floor of the Premises, pursuant to plans and specifications approved by Sublandlord and otherwise in compliance with Section 7 [Alterations] to the extent necessary to assure that no damage to the Premises or the Building or weakening of any structural support will be occasioned thereby.

**8.4. Other maintenance Services.** Without limiting any of its other obligations hereunder, Subtenant shall provide and perform, at its sole cost, (i) reasonable janitorial services for the Premises, (ii) pest control services required within the Premises, and shall keep the Premises free of all pests at all times and (iii) shall deposit all trash into designated containers in the Building and shall pay for the removal of trash from such designated containers

**8.5. No Right to Repair and Deduct.** Subtenant expressly waives the benefit of any existing or future Laws or judicial or administrative decision that would otherwise permit Subtenant to make repairs or replacements at Sublandlord's expense, or to terminate this Sublease because of Sublandlord's failure to keep the Premises or any part thereof in good order, condition or repair, or to abate or reduce any of Subtenant's obligations hereunder on account of the Premises or any part thereof being in need of repair or replacement. Without limiting the foregoing, Subtenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Subtenant to terminate this Sublease and with respect to any obligations of Sublandlord hereunder or and any right of Subtenant to make repairs or replacements and deduct the cost thereof from Rent.

## **9. LIENS**

Subtenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Subtenant. In the event Subtenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Sublandlord shall have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by Sublandlord and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Sublandlord by Subtenant upon demand. Sublandlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Sublandlord deems proper for its protection and protection of the Premises from mechanics' and materialmen's liens.

Subtenant shall give Sublandlord at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises.

## 10. COMPLIANCE WITH LAWS

**10.1. Compliance with Laws.** Subtenant shall promptly, at its sole expense, maintain the Premises and Subtenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary, provided however, that Subtenant shall not be required to make repairs or structural changes to the Premises required solely to correct conditions affecting the Premises existing prior to the Commencement Date or not related to Subtenant's use of the Premises (including, without limitation, in the event the Premises are damaged or destroyed by an earthquake or subsidence or by any other uninsured casualty not caused by Subtenant), unless the requirement for such changes is imposed as a result of any Alterations made or requested to be made by Subtenant. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 *et seq.* and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Sublease below). No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall give Subtenant any right to seek redress against Sublandlord for failing to comply with any Laws. Subtenant waives any rights now or hereafter conferred upon it by any existing or future Law to compel Sublandlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

## 10.2. Regulatory Approvals.

(a) **Responsible Party.** Subtenant understands and agrees that Subtenant's use of the Premises and construction of Alterations permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Subtenant shall be solely responsible for obtaining any and all such regulatory approvals, including without limitation any liquor permits or approvals. Subtenant shall not seek any regulatory approval without first obtaining the written consent of Sublandlord. Subtenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Subtenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Subtenant, and Sublandlord shall have no liability, monetary or otherwise, for any such fines or penalties. Subtenant shall indemnify, protect, defend and hold harmless forever ("Indemnify") the Sublandlord, the City and County of San Francisco ("City") and the Master Landlord including, but not limited to, all of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees, contractors, boards, commissions, departments, agencies and other subdivisions and each of the persons acting



by, through or under each of them, and their respective heirs, legal representatives, successors and assigns, and each of them (the "Indemnified Parties") against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses") arising in connection with Subtenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

**10.3. Compliance with Sublandlord's Risk Management Requirements.** Subtenant shall not do anything, or permit anything to be done, in or about the Premises or any Alterations permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect Sublandlord from any potential premises liability. Subtenant shall faithfully observe, at its expense, any and all reasonable requirements of Sublandlord's Risk Manager with respect thereto and with the requirements of any policies of commercial general, all risk property or other policies of insurance at any time in force with respect to the Premises and any Alterations as required hereunder.

## **11. ENCUMBRANCES**

**11.1. Encumbrance By Subtenant.** Notwithstanding anything to the contrary contained in this Sublease, Subtenant shall not under any circumstances whatsoever create any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance or assignment or pledge of an asset as security in any manner against the Premises or Sublandlord's or Subtenant's interest under this Sublease.

## **12. DAMAGE OR DESTRUCTION**

**12.1. Damage or Destruction to the Premises.** In the case of damage to or destruction of the Premises by earthquake, fire or any other casualty, not caused by Subtenant or Subtenant's Agents or Subtenant's Invitees, whether insured or uninsured, which prevents Subtenant from operating the Premises for the purposes stated herein and the cost of repairing such damage exceeds Ten Thousand Dollars (\$10,000), either Party may terminate this Sublease upon thirty (30) days prior written notice and upon any such termination Subtenant shall surrender the Premises in accordance with Section 18 and both Parties shall be relieved of any liability for such termination or for repairing such damage. If neither Party terminates this Sublease as provided in this Section 12.1, Subtenant shall, at its sole cost, promptly restore, repair, replace or rebuild the Premises to the condition the Premises were in prior to such damage or destruction, subject to any changes made in strict accordance with the requirements of Section 7 above. Under no circumstances shall Sublandlord have any obligation to repair, replace or rebuild the Premises in the event of such a casualty.

**12.2. No Abatement in Rent.** In the event of any damage or destruction to the Premises, and if neither party terminates this Sublease as provided in Section 12.1 above, there

shall be no abatement in the Rent payable hereunder.

12.3. **Waiver.** The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Alterations, and Sublandlord and Subtenant each hereby waives and releases any right to terminate this Sublease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

### 13. ASSIGNMENT AND SUBLETTING

13.1. **Restriction on Assignment and Subletting.** Subtenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Subtenant), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Alterations or its interest in this Sublease, or permit any portion of the Premises to be occupied by anyone other than itself, or sublet any portion of the Premises, without Sublandlord's prior written consent in each instance, which Sublandlord may grant or withhold in its sole and absolute discretion.

### 14. DEFAULT; REMEDIES

14.1. **Events of Default.** Any of the following shall constitute an event of default ("Event of Default") by Subtenant hereunder:

(a) **Rent.** Any failure to pay Rent or other sums, including sums due for utilities, within five (5) days after such sums are due;

(b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Sublease, provided Subtenant shall have a period of ten (10) days from the date of written notice from Sublandlord of such failure within which to cure such default under this Sublease, or, if such default is not capable of cure within such 10-day period, Subtenant shall have a reasonable period to complete such cure if Subtenant promptly undertakes action to cure such default within such 10-day period and thereafter diligently prosecutes the same to completion and uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from Sublandlord.

(c) **Vacation or Abandonment.** Any abandonment of the Premises for more than fourteen (14) consecutive days; and

(d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Subtenant, or an assignment by Subtenant for the benefit of



creditors, or any action taken or suffered by Subtenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted.

**14.2. Remedies.** Upon the occurrence of an Event of Default by Subtenant, Sublandlord shall have the following rights and remedies in addition to all other rights and remedies available to Sublandlord at Law or in equity:

(a) **Terminate Sublease and Recover Damages.** The rights and remedies provided by law California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Subtenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Subtenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. Sublandlord's efforts to mitigate the damages caused by Subtenant's breach of this Sublease shall not waive Sublandlord's rights to recover unmitigated damages upon termination.

(b) **Appointment of Receiver.** The right to have a receiver appointed for Subtenant upon application by Sublandlord to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Sublandlord pursuant to this Sublease.

**14.3. Sublandlord's Right to Cure Subtenant's Defaults.** If Subtenant defaults in the performance of any of its obligations under this Sublease, then Sublandlord may at any time thereafter with three (3) days prior written notice (except in the event of an emergency as determined by Sublandlord), remedy such Event of Default for Subtenant's account and at Subtenant's expense. Subtenant shall pay to Sublandlord, as Additional Charges, promptly upon demand, all sums expended by Sublandlord, or other costs, damages, expenses or liabilities incurred by Sublandlord, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Subtenant's obligations under this Section shall survive the termination of this Sublease. Nothing herein shall imply any duty of Sublandlord to do any act that Subtenant is obligated to perform under any provision of this Sublease, and Sublandlord's cure or attempted cure of Subtenant's Event of Default shall not constitute a waiver of Subtenant's Event of Default or any rights or remedies of Sublandlord on account of such Event of Default.

## **15. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION**

**15.1. Release and Waiver of Claims.** Subtenant, on behalf of itself and Subtenant's Agents, covenants and agrees that the Indemnified Parties shall not be responsible for or liable to Subtenant for, and, to the fullest extent allowed by any Laws, Subtenant hereby waives all rights

against the Indemnified Parties and releases them from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from any cause whatsoever, including without limitation, partial or complete collapse of the Building due to an earthquake or subsidence, except only to the extent such Losses are caused exclusively by the gross negligence or willful misconduct of the Indemnified Parties (except as provided in Section 15.1(e) below). Without limiting the generality of the foregoing:

(a) Subtenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of the Indemnified Parties for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to Subtenant's uses hereunder. Sublandlord would not be willing to enter into this Sublease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of the Indemnified Parties, and Subtenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages and covenants not to sue the Indemnified Parties for such damages arising out of this Sublease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Subtenant pursuant to this Sublease regardless of the cause.

(b) Without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue the Indemnified Parties under any present or future Laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that Sublandlord terminates this Sublease because of such claim for inverse condemnation or eminent domain.

(c) As part of Subtenant's agreement to accept the Premises in its "As Is" condition as provided herein, and without limiting such agreement and any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Premises and any related improvements or any Laws or regulations applicable thereto or the suitability of the Premises for Subtenant's intended use.

(d) Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated, and Subtenant fully RELEASES, WAIVES AND DISCHARGES, the

Indemnified Parties from any and all Losses and any and all claims , demands or rights against any of the Indemnified Parties under any present and future Laws, including, without limitation, any and all claims for relocation benefits or assistance form the Indemnified Parties under federal and state relocation assistance laws.

(e) Without limiting any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the Indemnified Parties decision to Sublease the Premises to the Subtenant, regardless of whether or not such decision is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties.

(f) Subtenant covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Indemnified Parties any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 15.1.

(g) Without limiting any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with (i) any construction work or other services that Subtenant may have performed on the Property on behalf of or related to the City or the Authority, whether or not such work has been or may be invoiced or otherwise billed to the City or the Authority, or (ii) Subtenant's prior use or occupancy of any building or other property located on or about the Property.

(h) In executing these waivers and releases, Subtenant has not relied upon any representation or statement other than as expressly set forth herein.

(i) Subtenant had made such investigation of the facts pertaining to these waivers and releases it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Subtenant regardless of any claims of mistake.

(j) In connection with the foregoing releases, Subtenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which

if known by him must have materially affected his settlement with the debtor.

Subtenant acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Subtenant realizes and acknowledges that it has agreed upon this Sublease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Sublease.

**15.2. Subtenant's Indemnity.** Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties from and against any and all Losses, expressly including but not limited to, any Losses arising out of a partial or complete collapse of the Building due to an earthquake or subsidence, incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any damage to or destruction of any property owned by or in the custody of Subtenant or Subtenant's Agents or Subtenant's Invitees, (b) any accident, injury to or death of a person, including, without limitation, Subtenant's Agents and Subtenant's Invitees, howsoever or by whomsoever caused, occurring in, on or about the Premises (c) any default by Subtenant in the observation or performance of any of the terms, covenants or conditions of this Sublease to be observed or performed on Subtenant's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Subtenant, Subtenant's Agents or Subtenant's Invitees or any person or entity claiming through or under any of them, of the Premises or any Alterations; (e) the condition of the Premises, including the Building, (f) any construction or other work undertaken by Subtenant on or about the Premises whether before or during the Term of this Sublease; or (g) any acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees, or of any trespassers, in, on or about the Premises or any Alterations; except to the extent that such Indemnity is void or otherwise unenforceable under any applicable laws in effect on or validly retroactive to the date of this Sublease and further except only to the extent such Losses are caused by the gross negligence and intentional wrongful acts and omissions of the Indemnified Parties. Notwithstanding the foregoing, Subtenant's obligations to indemnify the Indemnified Parties under this Section 15.2 shall remain in full force and effect regardless of whether or not the Indemnified Parties' decision to Sublease the Premises to the Subtenant, given the seismic condition of the property, is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Sublandlord's costs of investigating any Loss. Subtenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter. Subtenant's obligations under this Section shall survive the expiration or sooner termination of this Sublease. Notwithstanding anything contained herein, to the extent such

Losses are not covered by insurance required herein and subject to Section 12.1 above, Subtenant shall have no obligation to repair, restore or reconstruct the Premises (or to pay for the same) to correct or repair any conditions that existed prior to the Commencement Date of this Sublease or in the event the Premises are damaged or destroyed by an earthquake or subsidence or by any other uninsured casualty not caused by Subtenant.

## 16. INSURANCE

**16.1. Subtenant's Insurance.** Subtenant shall procure and maintain throughout the Term of this Sublease and pay the cost thereof the following insurance:

(a) **Property Insurance.** Subtenant shall procure and maintain, at its own cost, a standard fire and extended coverage insurance policy insuring the Premises, including, without limitation, the Building and all fixtures, Alterations, furniture and equipment located thereon, in an amount not less than their full replacement value.

(b) **Public Liability and Other Insurance.** Subtenant shall at all times, at its cost, also maintain insurance for the mutual benefit of Sublandlord and Subtenant against:

(i) Claims for personal injury under a policy of commercial general liability insurance, including without limitation, liquor liability insurance, claims for bodily injury, property damage or employer's liability occurring in or upon the Premises arising from earthquakes or subsidence, in an amount not less than \$1,000,000 combined single limit. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CG-00-01-11-88.

(ii) Worker's compensation insurance with employer's liability insurance covering all persons employed and with respect to whom death or bodily injury claims could be asserted against Sublandlord, Subtenant, the Premises or any other Sublandlord property, in an amount not less than \$1,000,000 each accident.

(iii) Automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Subtenant uses automobiles in connection with its use of the Premises. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CA-00-01-06-92.

**16.2. General Requirements.** All insurance provided for under this Sublease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by Sublandlord.

(a) Should any of the required insurance be provided under a claims-made

form, Subtenant shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of one (1) year beyond the expiration or termination of this Sublease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Sublease, such claims shall be covered by such claims-made policies.

(b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall be increased by Five Hundred Thousand Dollars (\$500,000) over the claims limits specified above.

(c) All liability insurance policies shall be endorsed to provide the following:

(i) Cover Subtenant as the insured and the Sublandlord as an additional insured.

(ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Sublease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(iii) All policies shall be endorsed to provide thirty (30) days' advance written notice to Sublandlord of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for Sublandlord set forth in the Basic Sublease Information.

**16.3. Proof of Insurance.** Subtenant shall deliver to Sublandlord certificates of insurance in form and with insurers satisfactory to Sublandlord, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon Sublandlord's request, and Subtenant shall provide Sublandlord with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. As to the insurance required pursuant to Section 16.1(b)(1) above, such certificate shall state, among other things, that such insurance coverage includes and shall cover Subtenant's indemnity obligations under Section 15.2 above. In the event Subtenant shall fail to procure such insurance, or to deliver such policies or certificates, Sublandlord may, at its option, procure the same for the account of Subtenant, and the cost thereof shall be paid to Sublandlord within five (5) days after delivery to Subtenant of bills therefor.

**16.4. No Limitation on Indemnities.** Subtenant's compliance with the provisions of this Section shall in no way relieve or decrease Subtenant's indemnification obligations herein or



any of Subtenant's other obligations or liabilities under this Sublease.

**16.5. Lapse of Insurance.** Notwithstanding anything to the contrary in this Sublease, Sublandlord may elect in Sublandlord's sole and absolute discretion to terminate this Sublease upon the lapse of any required insurance coverage by written notice to Subtenant.

**16.6. Subtenant's Personal Property.** Subtenant shall be responsible, at its expense, for separately insuring Subtenant's Personal Property.

**16.7. Waiver of Subrogation.** Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, Sublandlord and Subtenant each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises, or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises carried by Subtenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Subtenant shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against Sublandlord or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

## **17. ACCESS BY SUBLANDLORD**

### **17.1. Access to Premises by Sublandlord.**

(a) **General Access.** Sublandlord reserves for itself and Sublandlord's Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not less than twenty-four (24) hours oral or written notice to Subtenant (except in the event of an emergency) for any purpose.

(b) **Emergency Access.** In the event of any emergency, as determined by Sublandlord, Sublandlord may, at its sole option and without notice, enter the Premises and alter or remove any Alterations or Subtenant's Personal Property on or about the Premises. Sublandlord shall have the right to use any and all means Sublandlord considers appropriate to gain access to any portion of the Premises in an emergency. In such case, Sublandlord shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Subtenant from the Premises or any portion thereof.

(c) **No Liability.** Sublandlord shall not be liable in any manner, and Subtenant

hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Sublandlord's entry onto the Premises, except damage resulting directly and exclusively from the negligence or willful misconduct of Sublandlord or Sublandlord's Agents and not contributed to by the acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees.

**17.2. Access to Premises by Master Landlord.** Subtenant acknowledges and agrees that Master Landlord shall have all of the rights of access to the Premises described in the Master Lease.

## **18. SURRENDER**

**18.1. Surrender of the Premises.** Upon the termination of this Sublease, Subtenant shall surrender to Sublandlord the Premises in the same condition as of the Commencement Date, ordinary wear and tear excepted, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Subtenant. On or before any termination hereof, Subtenant shall, at its sole cost, remove any and all of Subtenant's Personal Property from the Premises and demolish and remove any and all Alterations from the Premises (except for any Alterations that Sublandlord agrees are to remain part of the Premises pursuant to the provisions of Section 7.3 above). In addition, Subtenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Alterations. In connection therewith, Subtenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Subtenant's obligations under this Section shall survive the termination of this Sublease. Any items of Subtenant's Personal Property remaining on or about the Premises after the termination of this Sublease may, at Sublandlord's option and after thirty (30) days written notice to Subtenant, be deemed abandoned and in such case Sublandlord may dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law.

If Subtenant fails to surrender the Premises to Sublandlord upon the termination of this Sublease required by this Section, Subtenant shall indemnify Sublandlord against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Subtenant resulting from Subtenant's failure to surrender the Premises.

## **19. HAZARDOUS MATERIALS**

**19.1. No Hazardous Materials.** Subtenant covenants and agrees that neither Subtenant nor any of Subtenant's Agents or Subtenant's Invitees shall cause or permit any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human



health or safety or to the environment, including, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 *et seq.*) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids ("Hazardous Material") to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises without the prior written approval of Sublandlord, which approval may be withheld in Sublandlord's sole and absolute discretion. Subtenant shall immediately notify Sublandlord if and when Subtenant learns or has reason to believe there has been any release of Hazardous Material in, on or about the Premises. Sublandlord may from time to time request Subtenant to provide adequate information for Sublandlord to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises and any other property, including, without limitation, soil, air and groundwater conditions ("Environmental Laws"), and Subtenant shall promptly provide all such information. Sublandlord and Sublandlord's Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Subtenant (except in the event of an emergency). Without limiting the foregoing, Subtenant acknowledges and agrees that it shall be bound by and will comply with the environmental protection provisions provided for in Section 13 of the Master Lease.

**19.2. Subtenant's Environmental Indemnity.** If Subtenant breaches any of its obligations contained in Section 19.1 above, or, if any act or omission or negligence of Subtenant or any of Subtenant's Agents or Subtenant's Invitees results in any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leeching or dumping ("Release") of Hazardous Material in, on, under or about the Premises or the Property, without limiting Subtenant's general Indemnity contained in Section 15.2 above, Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties, and each of them, from and against all any and all enforcement, investigation, remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws together with any and all Losses made or threatened by any third party against Sublandlord, Sublandlord's Agents, or the Premises, relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, Release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law, investigation and remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, the loss or restriction of

the use or any amenity of the Premises and attorneys' fees and consultants' fees and experts' fees and costs ("Hazardous Materials Claims") arising during or after the Term of this Sublease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Premises or the Property to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other Sublandlord property. Without limiting the foregoing, if Subtenant or any of Subtenant's Agents or Subtenant's Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises or the Property, Subtenant shall, immediately, at no expense to Sublandlord, take any and all appropriate actions to return the Premises or other Sublandlord property affected thereby to the condition existing prior to such Release and otherwise investigate and remediate the Release in accordance with all Environmental Laws. Subtenant shall provide Sublandlord with written notice of and afford Sublandlord a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material.

**19.3. Acknowledgment of Receipt of EBS and FOSL Reports.** Subtenant hereby acknowledges for itself and Subtenant's Agents that, prior to the execution of this Sublease, it has received and reviewed the Environmental Baseline Survey ("EBS") and the Finding of Suitability to Lease ("FOSL") described in Section 7 of the Master Lease.

## **20. GENERAL PROVISIONS**

**20.1. Notices.** Except as otherwise expressly provided in this Sublease, any notice given hereunder shall be effective only in writing and given by delivering the notice in person, or by sending it first class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid as follows:

Notice Address of Sublandlord:      Treasure Island Development Authority  
Treasure Island Project Office  
401 Palm Avenue  
Building 1, Room 217  
Treasure Island  
Attn: Executive Director  
Fax No.: 415-274-0299

with a copy to:                      Office of the City Attorney  
City Hall, Room 234  
1 Dr. Carlton B. Goodlett Place  
San Francisco, CA 94102-4682  
Attn: Michael S. Cohen

Fax No.: (415) 554-4755

Notice Address of Subtenant: W. Wong Construction Co., Inc.,  
3650 18<sup>th</sup> Street  
San Francisco, CA 94110  
Attn: Mr. Walter Wong, President  
Fax No. (415) 864-3838

Notice Address of Master Landlord: Commanding Officer (Code 24)  
Engineering Field Activity West  
Naval Facilities Engineering Command  
900 Commodore Drive  
San Bruno, California 94066

Any Party hereunder may designate a new address for notice purposes hereunder at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made, if sent by commercial overnight carrier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section 20.1 and applicable Laws, shall be deemed receipt of such notice.

**20.2. Estoppel Certificates.** Upon Sublandlord's request, Subtenant shall execute, acknowledge and deliver to Sublandlord, or such persons or entities designated by Sublandlord, a statement in writing certifying: (a) the Commencement Date and Term of this Sublease, (b) that this Sublease is unmodified and in full force and effect (or, if there have been modifications, that the Sublease is in full force and effect as modified and stating the modifications), (c) that there are no defaults under this Sublease (or if so, specifying the same), (d) the dates, if any, to which the Rent has been paid, and (e) any other information reasonably required by the Sublandlord.

**20.3. Security Deposit.** Subtenant shall pay to Sublandlord upon execution of this Sublease a security deposit in the amount of Two Thousand Dollars (\$2,000.00) as security for the faithful performance of all terms, covenants and conditions of this Sublease. Subtenant agrees that Sublandlord may (but shall not be required to) apply the security deposit in whole or in part to remedy any damage to the Premises caused by Subtenant, Subtenant's Agents or Subtenant's Invitees, or any failure of Subtenant to perform any other terms, covenants or conditions contained in this Sublease, without waiving any of Sublandlord's other rights and remedies hereunder or at Law or in equity. Should Sublandlord use any portion of the security deposit to cure any Event of Default by Subtenant hereunder, Subtenant shall immediately replenish the security deposit to the original amount, and Subtenant's failure to do so within five (5) days of Sublandlord's notice shall constitute a material Event of Default under this Sublease. Sublandlord's

obligations with respect to the security deposit are solely that of debtor and not trustee. Sublandlord shall not be required to keep the security deposit separate from its general funds, and Subtenant shall not be entitled to any interest on such deposit. The amount of the security deposit shall not be deemed to limit Subtenant's liability for the performance of any of its obligations under this Sublease. To the extent that Sublandlord is not entitled to retain or apply the security deposit pursuant to this Section 20.3, Sublandlord shall return such security deposit to Sublandlord within thirty (30) days of the termination of this Sublease.

**20.4. No Implied Waiver.** No failure by Sublandlord to insist upon the strict performance of any obligation of Subtenant under this Sublease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Rent during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of Sublandlord, shall constitute a waiver of such breach or of Sublandlord's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Sublease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Sublandlord given in any instance under the terms of this Sublease shall not relieve Subtenant of any obligation to secure the consent of Sublandlord in any other or future instance under the terms of this Sublease.

**20.5. Amendments.** Neither this Sublease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

**20.6. Authority.** If Subtenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Sublease on behalf of Subtenant does hereby covenant and warrant that Subtenant is a duly authorized and existing entity, that Subtenant has and is qualified to do business in California, that Subtenant has full right and authority to enter into this Sublease, and that each and all of the persons signing on behalf of Subtenant are authorized to do so. Upon Sublandlord's request, Subtenant shall provide Sublandlord with evidence reasonably satisfactory to Sublandlord confirming the foregoing representations and warranties. Without limiting the generality of the foregoing, Subtenant represents and warrants that it has full power to make the waivers and releases, indemnities and the disclosure set forth herein, and that it has received independent legal advice from its attorney as to the advisability of entering into a sublease containing those provisions and their legal effect.

**20.7. Joint and Several Obligations.** The word "Subtenant" as used herein shall include the plural as well as the singular. If there is more than one Subtenant, the obligations and liabilities under this Sublease imposed on Subtenant shall be joint and several.

**20.8. Interpretation of Sublease.** The captions preceding the articles and sections of this Sublease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Sublease. This Sublease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Sublease. Provisions in this Sublease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or Sublandlord holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Sublease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of Sublandlord is required to be obtained by Subtenant hereunder, Sublandlord may give or withhold such consent in its sole and absolute discretion.

**20.9. Successors and Assigns.** Subject to the provisions of Section 13, the terms, covenants and conditions contained in this Sublease shall bind and inure to the benefit of Sublandlord and Subtenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any transfer by Sublandlord (or by any subsequent Sublandlord) of its interest in the Premises as lessee, including any transfer by operation of Law, Sublandlord (or any subsequent Sublandlord) shall be relieved from all subsequent obligations and liabilities arising under this Sublease subsequent to such transfer.

**20.10. Brokers.** Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Sublease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Sublease.

**20.11. Severability.** If any provision of this Sublease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of this Sublease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Sublease shall be valid and be enforceable to the fullest extent permitted by Law.

**20.12. Governing Law.** This Sublease shall be construed and enforced in accordance with the Laws of the State of California and the federal government.

**20.13. Entire Agreement.** This instrument (including the exhibits hereto, which are made a part of this Sublease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Sublease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Sublease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Sublease. Subtenant hereby acknowledges that neither Sublandlord nor Sublandlord's Agents have made any representations or warranties with respect to the Premises or this Sublease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Subtenant by implication or otherwise unless expressly set forth herein. Notwithstanding the foregoing, the Parties shall make a good faith effort to negotiate mutually acceptable changes to this Sublease, if any, within ninety (90) days of the date hereof, provided however, that such changes, if any, shall be subject to the approval of the Master Landlord.

**20.14. Attorneys' Fees.** In the event that either Sublandlord or Subtenant fails to perform any of its obligations under this Sublease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Sublease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees.

**20.15. Time of Essence.** Time is of the essence with respect to all provisions of this Sublease in which a definite time for performance is specified.

**20.16. Cumulative Remedies.** All rights and remedies of either party hereto set forth in this Sublease shall be cumulative, except as may otherwise be provided herein.

**20.17. Survival of Indemnities.** Termination of this Sublease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Sublease, nor shall it affect any provision of this Sublease that expressly states it shall survive termination hereof. Subtenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Sublease, Subtenant has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter.

**20.18. Relationship of Parties.** Sublandlord is not, and none of the provisions in this



Sublease shall be deemed to render Sublandlord, a partner in Subtenant's business, or joint venturer or member in any joint enterprise with Subtenant. This Sublease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Sublease by Sublandlord does not constitute authorization or approval by Sublandlord of any activity conducted by Subtenant on, in or relating to the Premises.

**20.19. Recording.** Subtenant agrees that it shall not record this Sublease nor any memorandum or short form hereof in the official records of any county.

**20.20. Non-Liability of Indemnified Parties' officials, employees and Agents.** No elective or appointive board, commission, member, officer or employee of any of the Indemnified Parties shall be personally liable to Subtenant, its successors and assigns, in the event of any default or breach by Sublandlord or for any amount which may become due to Subtenant, its successors and assigns, or for any obligation of Sublandlord under this Agreement.

**20.21. No Discrimination.** Subtenant shall comply with the non-discrimination provisions of Section 19.1 of the Master Lease, including, without limitation, posting all notices required therein.

**20.22. Counterparts.** This Sublease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**20.23. Master Landlord's Consent.** This Sublease is expressly conditioned upon receipt of the written consent of Master Landlord

## **21. SPECIAL PROVISIONS**

**21.1. Signs.** Subtenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or from public corridors or other portions of any common areas of the Building or from the exterior of the Premises, without Sublandlord's prior written consent, which Sublandlord may withhold or grant in its sole discretion.

**21.2. Public Transit Information.** Subtenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Subtenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to the Building and encouraging use of such facilities, all at Subtenant's sole expense.

### 21.3. Non-Discrimination.

(a) Covenant Not to Discriminate. In the performance of this Sublease, Subtenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with, Subtenant in any of Subtenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Subtenant.

(b) Subleases and Other Subcontracts. Subtenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Subtenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Subtenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Sublease.

(c) Non-Discrimination in Benefits. Subtenant does not as of the date of this Sublease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) HRC Form. Subtenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC"). Subtenant hereby represents that prior to execution of this Sublease, Subtenant executed and submitted to the HRC Form HRC-12B-101 with supporting documentation.

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference



and made a part of this Agreement as though fully set forth herein. Subtenant shall comply fully with and be bound by all of the provisions that apply to this Sublease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Subtenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Sublease may be assessed against Subtenant and/or deducted from any payments due Subtenant.

**21.4. No Relocation Assistance; Waiver of Claims.** Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated or expires by its own terms, and Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, Sublandlord, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from Sublandlord under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Sublease with respect to a Taking.

**21.5. MacBride Principles - Northern Ireland.** The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Subtenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.

**21.6. Tropical Hardwood Ban.** The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product.

**21.7. Conflicts of Interest.** Subtenant states that it is familiar with the provisions of Section 8.105 and 8.106 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Subtenant further certifies that it has made a complete disclosure to the Sublandlord of all facts bearing on any possible interests, direct or indirect, which Subtenant believes any officer or employee of the Sublandlord presently has or will have in this Sublease or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant to make such disclosure, if any, shall constitute grounds for the Sublandlord's termination and cancellation of this Sublease.

**21.8. Burma (Myanmar) Business Prohibition.** Subtenant is not the government of Burma (Myanmar), a person or business entity organized under the laws of Burma (Myanmar) or a "prohibited person or entity" as defined in Section 12J.2(G) of the San Francisco Administrative

Code. The Authority reserves the right to terminate this Sublease for default if Subtenant violates the terms of this clause.

Chapter 12J of the San Francisco Administrative Code is hereby incorporated by reference as though fully set forth herein. The failure of Subtenant to comply with any of its requirements shall be deemed a material breach of this Sublease. In the event Subtenant fails to comply in good faith with any of the provisions of Chapter 12J of the San Francisco Administrative Code, Subtenant shall be liable for liquidated damages for each violation in an amount equal to Subtenant's net profit under this Sublease, or 10% of the total amount of the Sublease, or \$1,000, whichever is greatest. Subtenant acknowledges and agrees the liquidated damages assessed shall be payable to the Authority upon demand and may be setoff against any moneys due to the Subtenant from this Sublease.

**21.9. Prohibition of Tobacco Advertising.** Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the City or the Authority, including the Premises and the Property. This prohibition includes the placement of the name of a company producing selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communicate the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

Sublandlord and Subtenant have executed this Sublease in triplicate as of the date first written above.

**SUBTENANT:**

**W. Wong Construction Co., Inc.,**  
a California Corporation

By: Walter Wong

Its: President

Date: 7-13-99

**SUBLANDLORD:**

**The Treasure Island Authority**

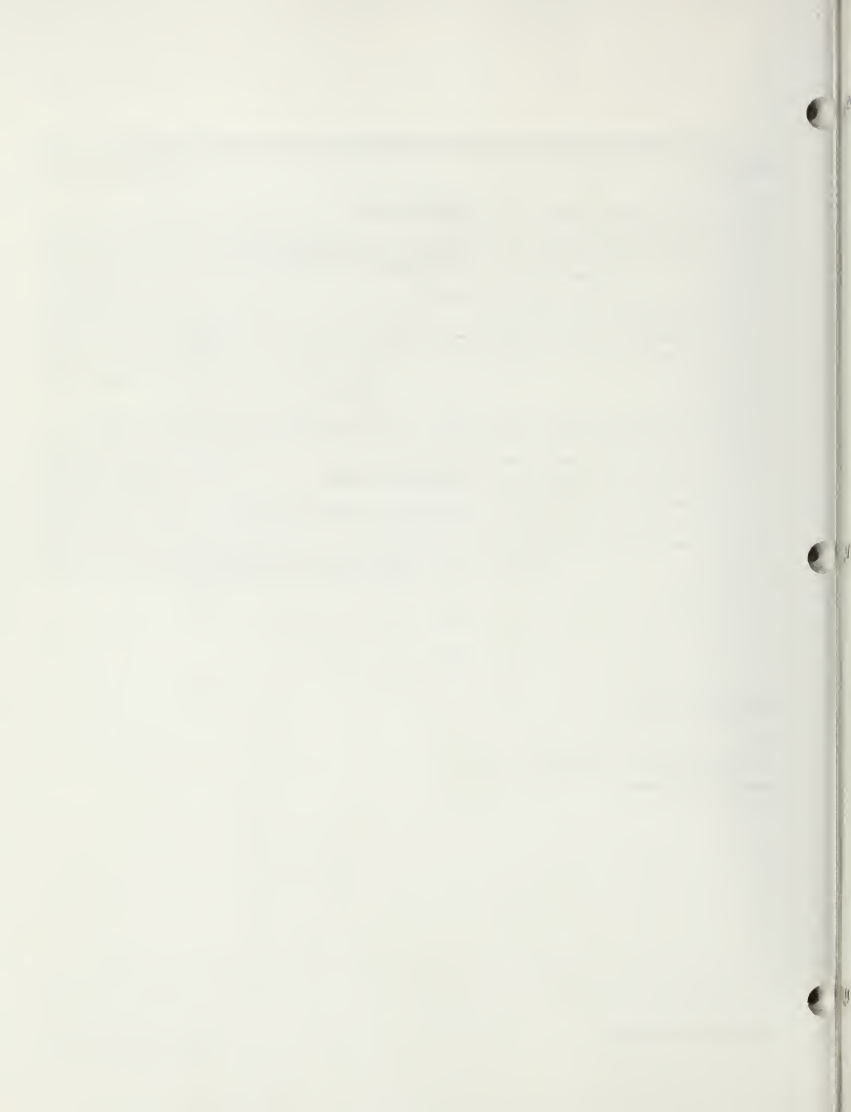
By: Robert M. ...

Its: \_\_\_\_\_

Date: \_\_\_\_\_

Approved as to Form:

Michael ...  
Deputy City Attorney







**AGENDA ITEM**  
**Treasure Island Development Authority**  
**City and County of San Francisco**

**Subject:** Resolution Authorizing the Executive Director  
To Execute an Amendment to the Land and  
Structures Master Lease with the U.S Navy  
To Add 35,000 Square Feet of Paved Property

Agenda Items No. 11 & 12  
Meeting of March 14, 2001

Resolution Authorizing the Executive Director  
To Execute a Sublease with the Treasure Island  
Homeless Development Initiative for 35,000 Square  
Feet of Paved Property

**Contact/Phone:** Annemarie Conroy, Executive Director  
Stephen Proud, Director of Development  
274-0660

**SUMMARY OF PROPOSED ACTION:**

These two resolutions authorize the Executive Director to amend the Land and Structures Master Lease with the United States Navy to include 35,000 square feet of paved space and to sublease that same space to the Treasure Island Homeless Development Initiative (TIHDI).

**BACKGROUND**

As set forth in the Homeless Assistance Agreement for Treasure Island, the Treasure Island Homeless Development Initiative (TIHDI) may request a sublease with the Authority for 12,000 square feet of office space for support operations for TIHDI Member Organizations providing services on the Base. While the Authority staff has been working with TIHDI over the past months to identify possible office space, to date the parties have not been able to locate a site that would be cost effective to renovate and rehabilitate for use.

To address the need for service space, the Authority has worked with TIHDI to create an alternative to the use of an existing building for office space. Under this proposal, TIHDI would sublease a paved area approximately 35,000 square feet in size on the south end of the block bordered by E Street, D Street, 9<sup>th</sup> Avenue, and 10<sup>th</sup> Avenue (as shown on Exhibit A). At the proposed site, TIHDI would locate modular office facilities that would include office space for support services, a community room, and training facilities (see site map attached as Exhibit B). The site would be attractively landscaped and employee parking would be provided at the site.

At the present time, the Authority does not have a lease with the United States Navy for the property under consideration. By approving the resolutions under consideration, the Authority would: (i) authorize the Executive Director to execute an amendment to the Land and Structures Master Lease with the Navy to include the property under consideration; and (ii) authorize the

Executive Director to execute a sublease with TIHDI for use of the property for office support space. In general, the terms of the sublease are as follows:

- ✓ The proposed term is seven years. The site under consideration is granted to TIHDI for a three-year term, at which time the Authority reserves the right, in its sole discretion, to relocate the Operator to another suitable location for the remaining term of the sublease. In the event of relocation, the Authority agrees to share the "out-of pocket" relocation costs with TIHDI on a 50/50 basis.
- ✓ TIHDI is not changed rent for property but is responsible for the cost of utilities, any Common Area Maintenance (CAM) charge levied by the Navy, taxes, insurance, security, and property maintenance costs including landscaping.
- ✓ The Authority has the right to approve all design, alterations and signage.

**Recommendation:** Staff recommends approval of both resolutions.



[Land & Structures Master Lease Amendment]

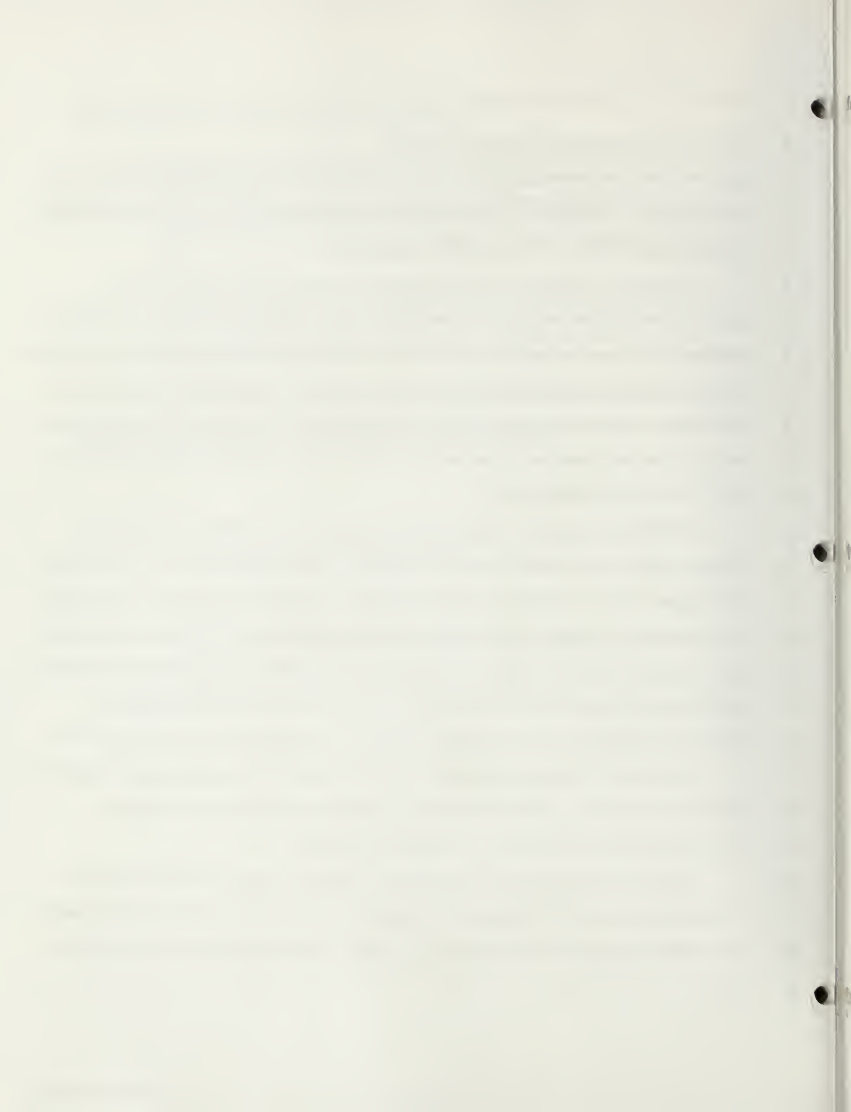
AUTHORIZING AN AMANEDMENT TO THE LAND AND STRUCTURES MASTER LEASE BETWEEN THE AUTHORITY AND THE UNITED STATES NAVY TO ADD APROXIMATELY 35,000 SQUARE FEET TO THE LEASED PREMISES .

WHEREAS, On May 2, 1997, the Board of Supervisors (the "Board") passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of former Naval Station Treasure Island (the "Base") for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California legislature (i) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the City's Board of Supervisors, and, (ii) with respect to those portions of the Base which are subject to the Tidelands Trust, vested in the Authority the authority to administer the public trust for commerce, navigation and fisheries as to such property; and,

WHEREAS, THE Authority and the United States of America, acting by and through the Department of the Navy entered into the Land and Structures Master Lease and six amendments thereto, (collectively, the "Master Lease"); and,

WHERAS, The Authority has requested that the Navy amend the Master Lease to include approximately 35,000 square feet of property on the south end of the block bordered by E Street, D Street, 9<sup>th</sup> Avenue, and 10<sup>th</sup> Avenue at former Naval Station Treasure Island; and



1 WHEREAS, The Master Lease enables the Authority to sublease the leasehold  
2 premises for interim use; and,

3 WHEREAS, The Treasure Island Homeless Development Initiative ("TIHDI") wishes to  
4 sublease the property under consideration to locate offices for support services; and

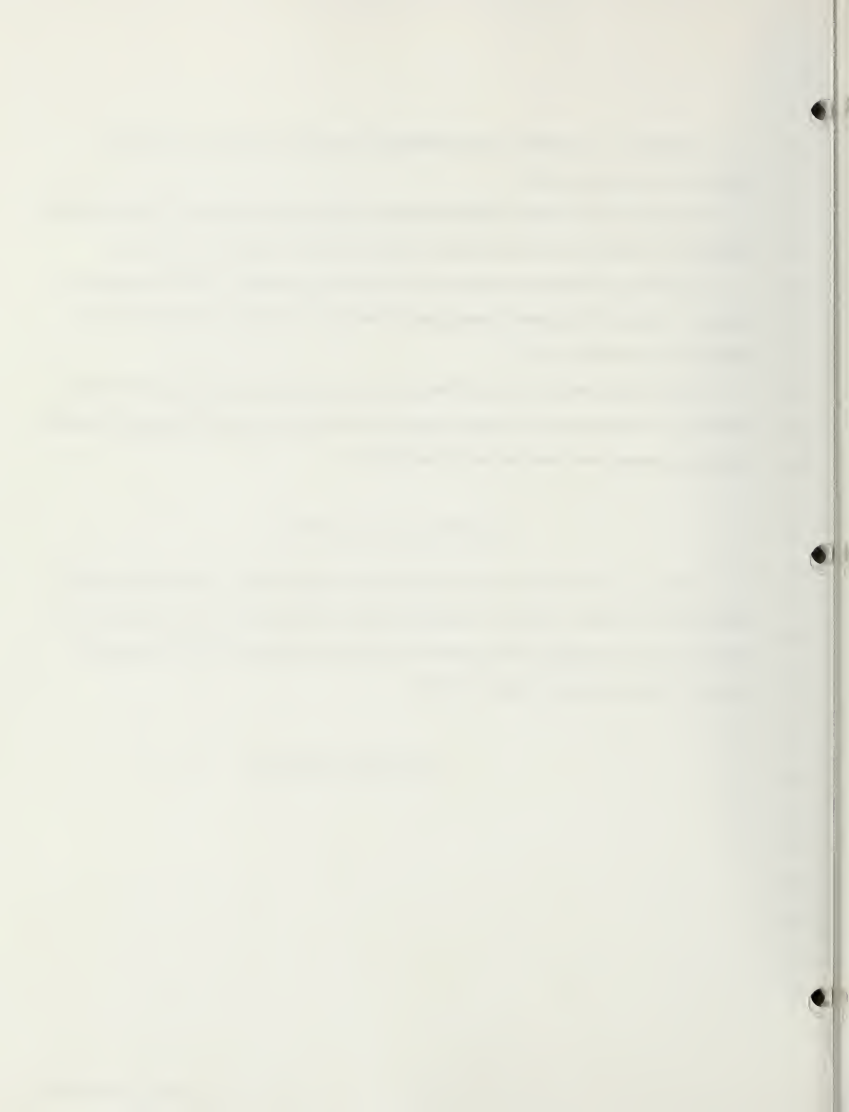
5 WHEREAS, The Navy is willing to amend the Master Lease to include the additional  
6 land, and a copy of the proposed amendment to the Master Lease is attached hereto as  
7 Exhibit A; now, therefore, be it

8 RESOLVED, That the Board of Directors hereby authorizes the Executive Director to  
9 enter into an amendment to the Master Lease with the Navy to include the property described  
10 in the lease amendment attached hereto as Exhibit A.

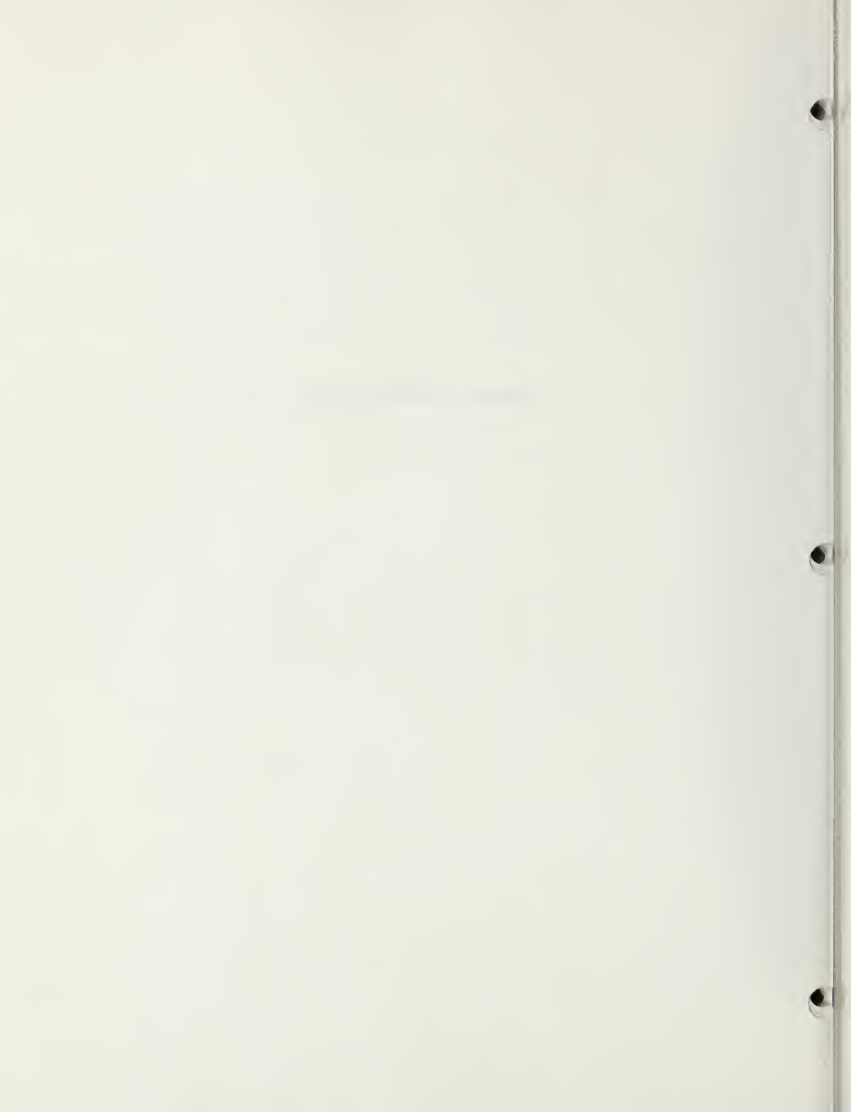
11  
12 CERTIFICATE OF SECRETARY

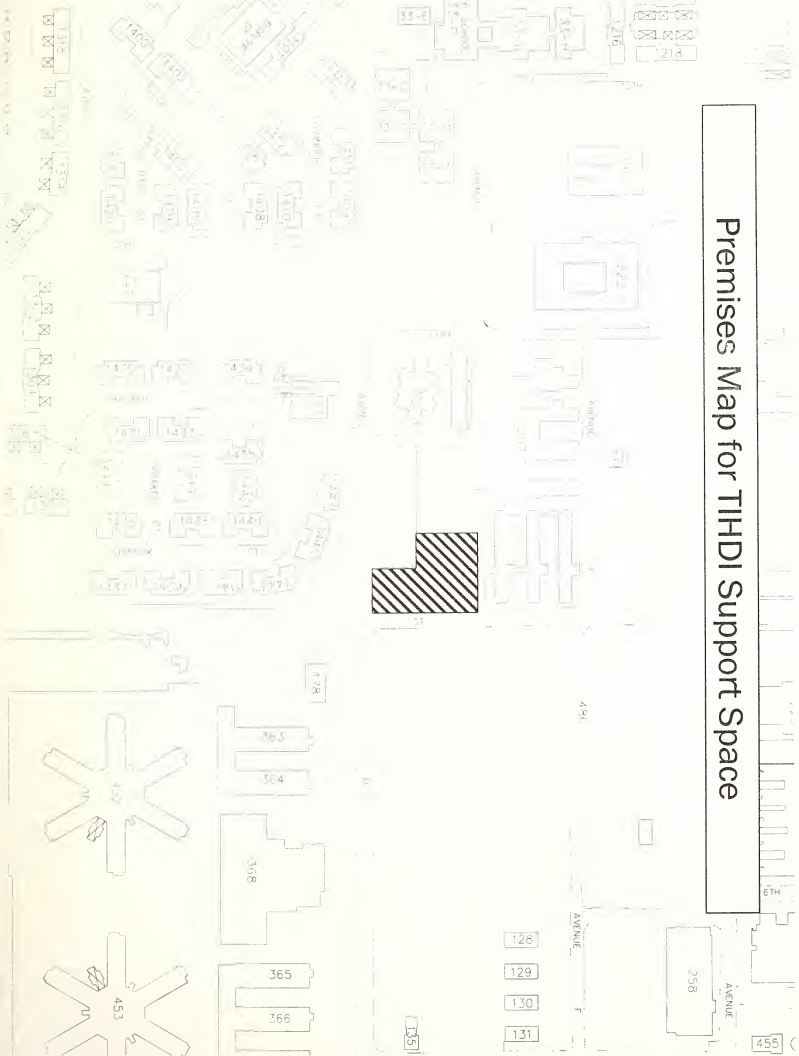
13 *I hereby certify that I am the duly elected and acting Secretary of the Treasure Island*  
14 *Development Authority, a California nonprofit public benefit corporation, and that the above*  
15 *Resolution was duly adopted and approved by the Board of Directors of the Authority at a*  
16 *properly noticed meeting on March 14, 2001.*

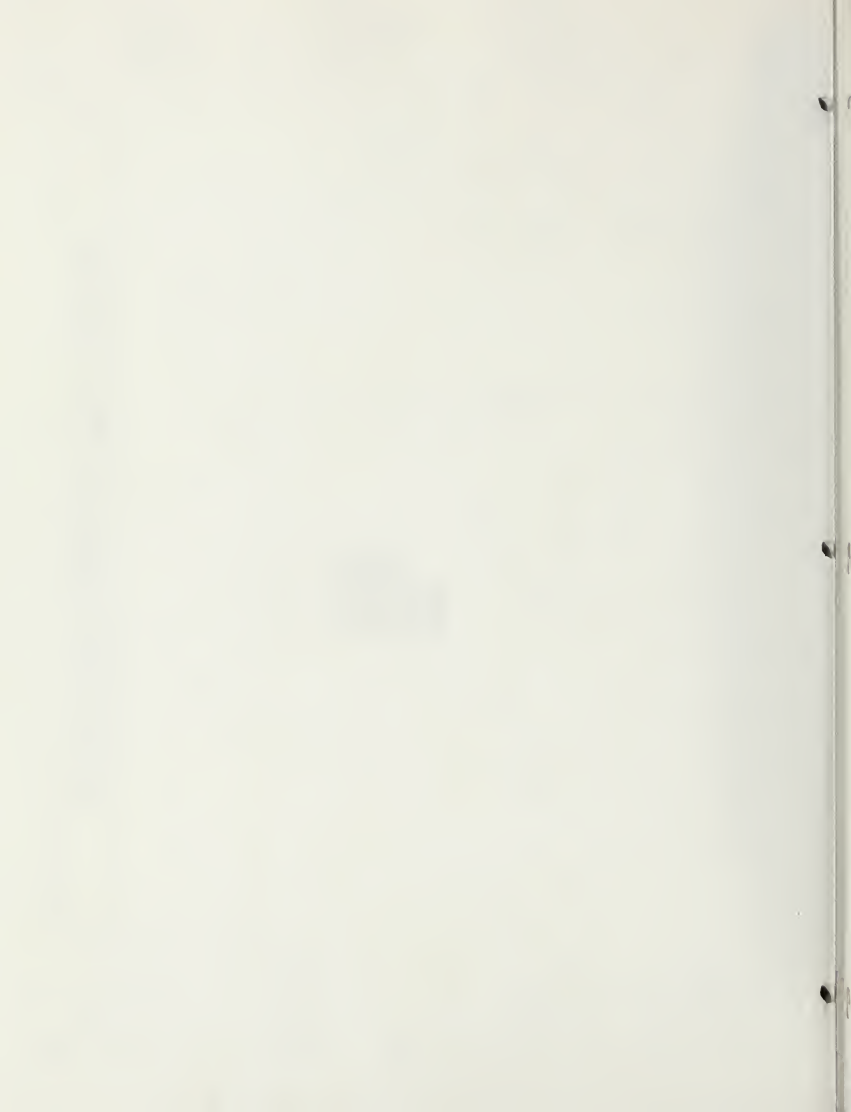
17  
18  
19 \_\_\_\_\_  
John Elberling, Secretary  
20  
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**EXHIBIT A - PREMISES MAP**









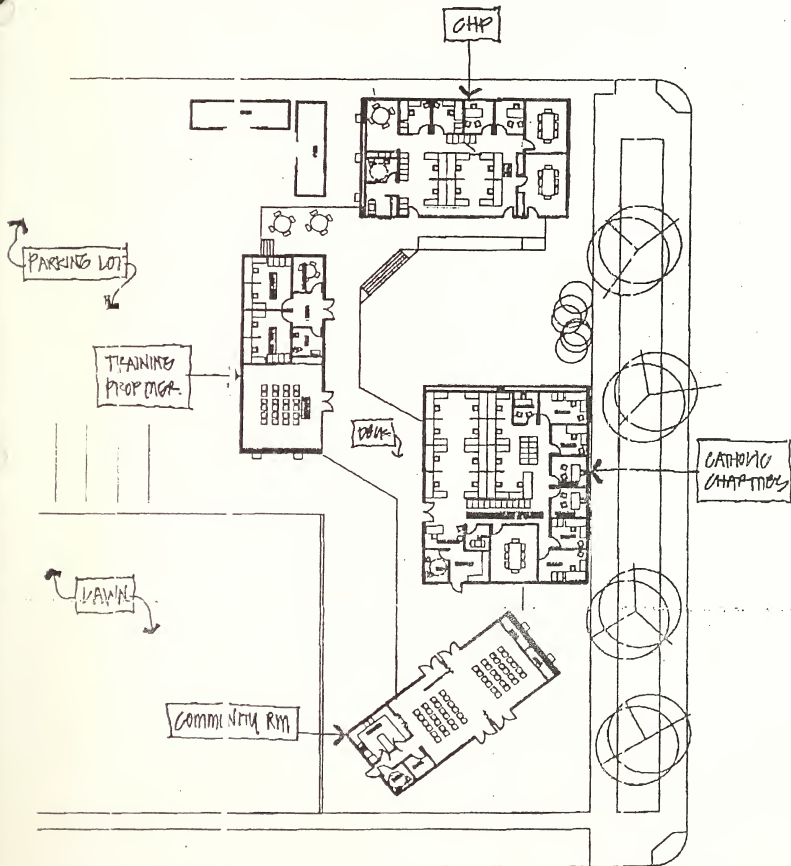
**EXHIBIT B - SITE PLAN**



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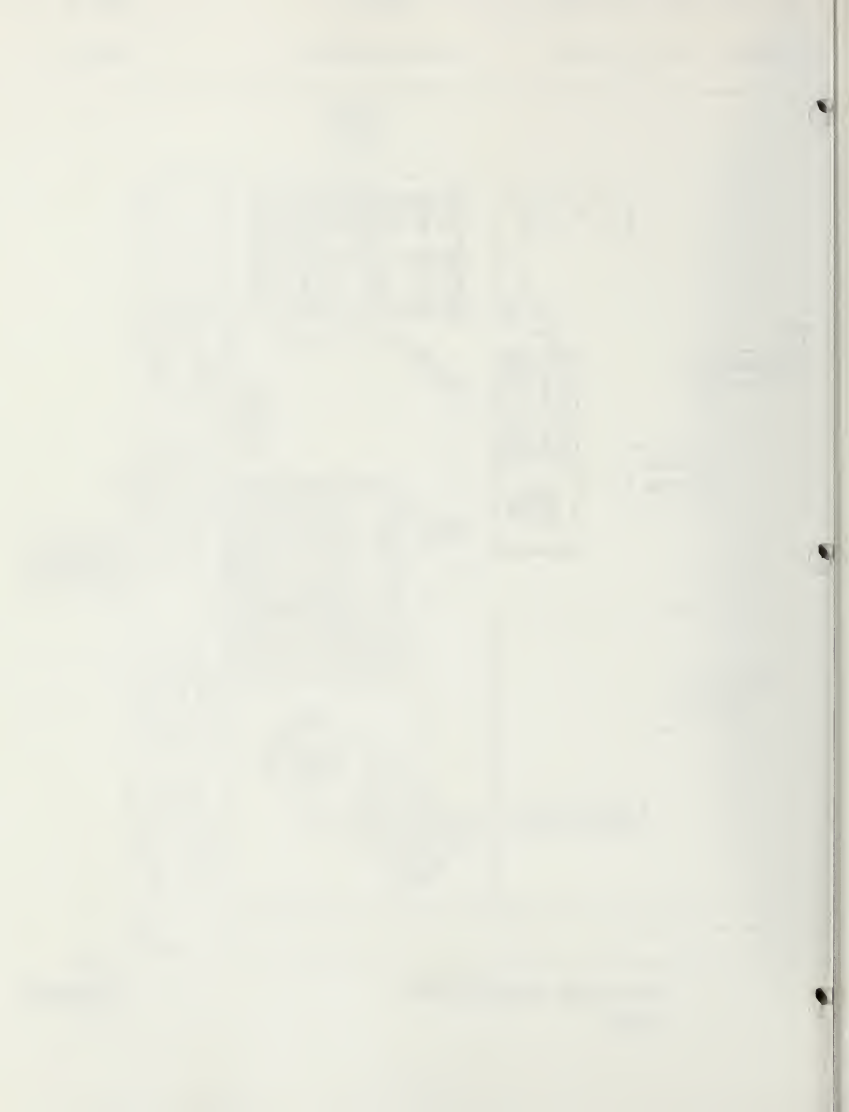
AsianNeighborhoodDesign

002/002



TIHDI SOCIAL SERVICE OFFICES  
1/19/01





SEVENTH AMENDMENT  
TO LEASE AGREEMENT N6247499RP42P12  
BETWEEN  
THE UNITED STATES OF AMERICA  
AND  
TREASURE ISLAND DEVELOPMENT AUTHORITY

THIS LEASE AMENDMENT made this \_\_\_\_ day of \_\_\_\_\_, 2001, by and between the UNITED STATES OF AMERICA, acting by and through the Department of the Navy, hereinafter called the "Government", and the TREASURE ISLAND DEVELOPMENT AUTHORITY, hereinafter called the "Lessee";

WHEREAS, the parties hereto, as of 19 November 1998, entered into Lease Agreement N6247499RP42P12 under the terms of which the Lessee uses certain real property for space located at the former Naval Station, Treasure Island; and

WHEREAS, the parties agree to amend the terms of the Lease Agreement.

NOW THEREFORE, in consideration of the terms, covenants and conditions hereinafter set forth, the following paragraph to Lease N6247499RP42P12 is hereby amended to reflect the following change;

Paragraph 1. LEASED PREMISES add the following:

Use of approximately 36,444 square feet of land as shown on Exhibit A-5, attached hereto and made a part hereof.

All other terms and conditions of the Lease Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have, on the respective dates set forth above duly executed this amendment to the Lease as of the day and year first above written.

UNITED STATES OF AMERICA

TREASURE ISLAND DEVELOPMENT  
AUTHORITY

\_\_\_\_\_  
Title \_\_\_\_\_

\_\_\_\_\_  
Title \_\_\_\_\_

APPROVED AS TO FORM:

\_\_\_\_\_  
CITY ATTORNEY

Amendment No. 7 to Lease N6247499RP42P12  
(increases leased area by 36,444 sf)

# Amendment No. 7 Parking Lot

CHILD CARE  
CENTER

Exhibit A-5







1 [Sublease for Support Space for Treasure Island Homeless Development Initiative]  
2 AUTHORIZING A SUBLEASE BETWEEN THE TREASURE ISLAND DEVELOPMENT  
3 AUTHORITY AND THE TREASURE ISLAND HOMELESS DEVELOPMENT INITIATIVE FOR  
4 APPROXIMATELY 35,000 SQUARE FEET OF PAVED PROPERTY.

5 WHEREAS, On May 2, 1997, the Board of Supervisors (the "Board") passed  
6 Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a  
7 nonprofit public benefit corporation known as the Treasure Island Development Authority (the  
8 "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction,  
9 rehabilitation, reuse and conversion of former Naval Station Treasure Island (the "Base") for  
10 the public interest, convenience, welfare and common benefit of the inhabitants of the City  
11 and County of San Francisco; and,

12 WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended  
13 Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter  
14 1333 of the Statutes of 1968 (the "Act"), the California legislature (i) designated the Authority  
15 as a redevelopment agency under California redevelopment law with authority over the Base  
16 upon approval of the City's Board of Supervisors, and, (ii) with respect to those portions of the  
17 Base which are subject to the Tidelands Trust, vested in the Authority the authority to  
18 administer the public trust for commerce, navigation and fisheries as to such property; and,

19 WHEREAS, Under the provisions of the homeless assistance agreement the Treasure  
20 Island Homeless Development Initiative (TIHDI) may request up to 12,000 square feet of  
21 office space for support operations for TIHDI member organization; and,

22 WHEREAS, The Authority and TIHDI have made good faith efforts to identify an existing  
23 building on the Base for such use; and

24 WHEREAS, The cost to rehabilitate and renovate existing buildings and facilities is cost  
25 prohibitive; and,



1 WHEREAS, The Treasure Island Homeless Development Initiative ("TIHDI") and the  
2 Authority have prepared an alternative plan to provide support services in modular office  
3 facilities at a paved site located on the south end of the block bordered by E Street, D Street,  
4 9<sup>th</sup> Avenue, and 10<sup>th</sup> Avenue on the Base; and

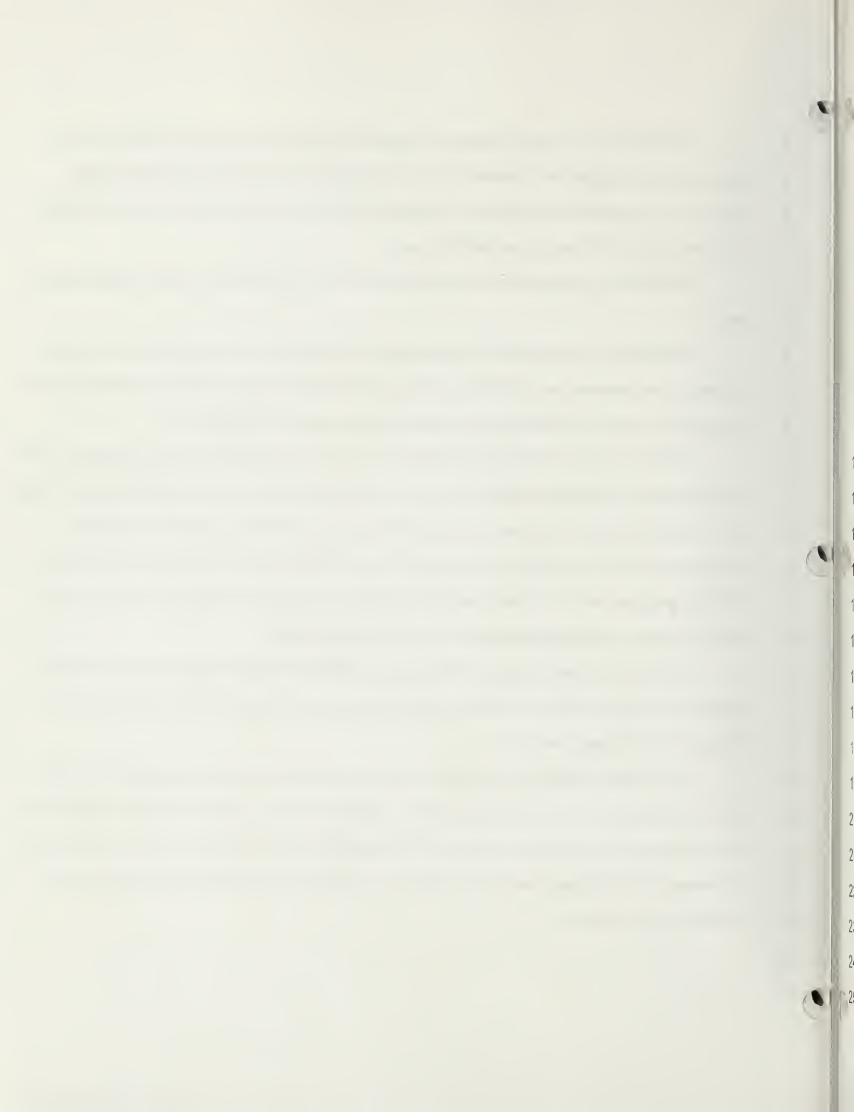
5 WHEREAS, The provision of support service is a critical element of the TIHDI program;  
6 and

7 WHEREAS, The Authority has approved an amendment to the Land and Structures  
8 Master Lease between the United States Navy and the Authority to add approximately 35,000  
9 square feet of paved property to locate the proposed modular facilities; and

10 WHEREAS, The Authority and TIHDI have agreed on terms terms of a sublease for the  
11 facility, attached hereto as Exhibit A, which among other things provides for (i) a term of seven  
12 years, with an option to relocate the facility if the site is needed to support an approved  
13 development plan for the Base, (ii) the site will be provided to TIHDI at no cost, and (iii) that  
14 TIHDI is responsible for all costs associated with the construction of the improvements and  
15 related property management expenses; now, therefore, be it

16 RESOLVED, That the Board of Directors hereby authorizes the Executive Director to  
17 execute a sublease with the TIHDI for 35,000 square feet of paved property as described in  
18 the attached sublease; and be it

19 FURTHER RESOLVED, That the Authority authorizes the Executive Director to enter  
20 into modifications to the Sublease (including, without limitation, the attachment or modification  
21 of exhibits) that are in the best interests of the Authority and the City, do not materially change  
22 the terms of the Sublease, and are necessary and advisable to effectuate the purpose and  
23 intent of this resolution.  
24  
25



CERTIFICATE OF SECRETARY

*I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on March 14, 2001.*

\_\_\_\_\_  
John Elberling, Secretary









**SUBLEASE**

**between**

**THE TREASURE ISLAND DEVELOPMENT AUTHORITY**

**as Sublandlord**

**and**

**Treasure Island Homeless Development Initiative,  
a nonprofit corporation,**

**as Subtenant**

**For the Sublease of**

**Vacant Lot Consisting of Approximately 25,000 Square Feet on  
South End of Block Bordered by E Street, D Street, 9<sup>th</sup> Avenue, and 10<sup>th</sup> Avenue at  
Naval Station Treasure Island  
San Francisco, California**

**March \_\_, 2001**

## TREASURE ISLAND SUBLEASE

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**LIST OF EXHIBITS:**

EXHIBIT A - Master Lease

EXHIBIT B – Map of Area

EXHIBIT C – Seismic Report

EXHIBIT D – Description of Support Services

EXHIBIT E – Rules and Regulations

EXHIBIT F – Utilities

## TREASURE ISLAND SUBLEASE

THIS SUBLEASE (the "Sublease"), dated as of this \_\_ day of March, 2001, is by and between the Treasure Island Development Authority ("Sublandlord") and Treasure Island Homeless Development Initiative, a nonprofit corporation ("Subtenant"). From time to time, Sublandlord and Subtenant together shall be referred to herein as the "Parties".

This Sublease is made with reference to the following facts and circumstances:

A. The United States of America, acting by and through the Department of Navy ("Master Landlord") and Sublandlord entered into the Land and Structures Master Lease (referred to herein as the "Master Lease"). A copy of the Master Lease is attached hereto as Exhibit A. Under the Master Lease, the Master Landlord leased to Sublandlord on Naval Station Treasure Island (the "Property") portions of the Property which included a vacant lot consisting of approximately 25,000 square feet in size located on the southern end of the block bordered by E Street, D Street, 9<sup>th</sup> Avenue, and 10<sup>th</sup> Avenue on Treasure Island, all as more particularly shown on the map attached hereto as Exhibit B (the "Premises").

B. Subtenant desires to sublet all of the Premises from Sublandlord and Sublandlord is willing to sublet the Premises to Subtenant on the terms and conditions contained in this Sublease.

NOW THEREFORE, Sublandlord and Subtenant hereby agree as follows:

### **1. PREMISES**

1.1. Subleased Premises and License. Subject to the terms, covenants and conditions of this Sublease, Sublandlord subleases to Subtenant the Premises, including the improvements thereon.

### **1.2. As Is Condition of Premises and the License Area.**

(a) **Inspection of Premises and License Area.** Subtenant represents and warrants that Subtenant has conducted a thorough and diligent inspection and investigation, either independently or through its officers, directors, employees, agents, affiliates, subsidiaries, licensees and contractors, and their respective heirs, legal representatives, successors and assigns, and each of them, ("Subtenant's Agents") of the Premises and the suitability of the Premises for Subtenant's intended use. Subtenant is fully aware of the needs of its operations and has determined, based solely on its own investigation, that the Premises is suitable for Subtenant's operations and intended uses.

(b) **As Is; Disclaimer of Representations.** Subtenant acknowledges and agrees that the Premises is being subleased and accepted in its "AS IS, WITH ALL FAULTS" condition, without representation or warranty of any kind, and subject to all applicable laws, statutes, ordinances, resolutions, regulations, proclamations, orders or decrees of any municipal, county, state or federal government or other governmental or regulatory authority with jurisdiction over the Premises, or any portion thereof, whether currently in effect or adopted in the future and whether or not in the contemplation of the Parties, including without limitation the orders and citations of any regulatory authority with jurisdiction over life and safety issues concerning the Premises ("Laws") governing the use, occupancy, management, operation and possession of the Premises. Without limiting the foregoing, this Sublease is made subject to any and all covenants, conditions, restrictions, easements and other title matters affecting the Premises, or any portion thereof, whether or not of record. Subtenant acknowledges and agrees that neither Sublandlord, the City and County of San Francisco ("City"), nor any of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees or contractors, or their respective heirs, legal representatives, successors and assigns ("Sublandlord's Agents") have made, and Sublandlord hereby disclaims, any representations or warranties, express or implied, concerning (i) title or survey matters affecting the Premises, (ii) the physical, geological, seismological or environmental condition of the Premises, including, without limitation, the matters described in the Seismic Report (as defined below) (iii) the quality, nature or adequacy of any utilities serving the Premises, (iv) the feasibility, cost or legality of constructing any Alterations on the Premises if required for Subtenant's use and permitted under this Sublease, (v) the safety of the Premises, whether for the use of Subtenant or any other person, including Subtenant's Agents or Subtenant's clients, customers, vendors, invitees, guests, members, licensees, assignees or subtenants ("Subtenant's Invitees"), or (vi) any other matter whatsoever relating to the Premises or its use, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose.

(c) **Seismic Report.** Without limiting Section 1.2 (b) above, Subtenant expressly acknowledges for itself and Subtenant's Agents that it received and read that certain report dated August 1995, entitled "*Treasure Island Reuse Plan: Physical Characteristics, Building and Infrastructure Conditions.*" prepared for the Office of Military Base Conversion, Department of City Planning, and the Redevelopment Agency of the City and County of San Francisco, (the "Seismic Report"), a copy of the cover page of which is attached hereto as Exhibit C. Subtenant has had an adequate opportunity to review the Seismic Report with expert consultants of its own choosing. The Seismic Report, among other matters, describes the conditions of the soils on the Property and affecting the Building and points out that in the area of the Property where the Premises are located, an earthquake may cause the ground under and around the Premises to spread laterally and/or result in other risks. In that event, there is a significant risk that the Building and any other structures or improvements located on or about the Premises, may fail structurally and collapse.

Sublandlord will provide Subtenant with additional information about the seismic conditions of the Premises as it becomes available. Subtenant retains the right to terminate this Sublease at any time upon written notice to the Sublandlord if, on the basis of such additional information, it reasonably deems the Premises to be unsafe for occupancy.

## **2. COMPLIANCE WITH MASTER LEASE**

**2.1. Incorporation by Reference.** All of the terms and conditions of the Master Lease are hereby incorporated by reference into this Sublease as if fully set forth herein

**2.2. Conflict.** If any of the provisions of this Sublease conflict with any portion of the Master Lease as incorporated herein, then the terms of the Master Lease shall govern.

**2.3. Compliance with Master Lease.** Subtenant shall not do or permit to be done anything which would constitute a violation or a breach of any of the terms, conditions or provisions of the Master Lease or which would cause the Master Lease to be terminated or forfeited by virtue of any rights of termination reserved by or vested in the Master Landlord.

**2.4. Automatic Termination.** If the Master Lease terminates for any reason whatsoever, this Sublease shall automatically terminate and the Parties shall thereafter be relieved from all liabilities and obligations under this Sublease, except for liabilities and obligations which expressly survive termination of this Sublease. Subtenant acknowledges and agrees that it has reviewed the Master Lease, is aware of the circumstances upon which the Master Lease may be terminated and hereby assumes all risks associated with the automatic termination of this Sublease because of the termination of the Master Lease.

## **3. TERM**

**3.1. Term of Sublease.** The term of this Sublease shall commence on the date of this Agreement as written above (the "Commencement Date") and shall continue unless soonert terminated pursuant to the provisions of this Sublease until March 31, 2008. This lease may be terminated by Subtenant by providing the the Sublandlord with a 30-day advance notice in writing.

**3.2. Relocation of Sublease Premises.** If the Premises are required for redevelopment pursuant to a development plan approved by the Board of Directors of the Authority, the Sublandlord reserves the right, in its sole discretion, to relocate Subtenant to another comparable site on the Property as determined by the Sublandlord at any time after three years from the Commencement Date of this Sublease for the remaining Term. In the event of any such relocation, the new location shall become the Premises hereunder. Also, in the event of any such relocation, Sublandlord and Subtenant shall each be responsible for one-half (50%) of the actual out-of-pocket costs incurred by Subtenant to prepare the proposed site, move temporary

office structures and any furniture and equipment used therein ("Relocation Costs"). Subtenant shall be solely responsible for all other costs in connection with any such relocation. Notwithstanding the forgoing, Sublandlord's costs under this Section 3.2 shall not exceed two-hundred thousand dollars (\$200,000).

In the event any such relocation is required, Sublandlord shall provide Subtenant with a 120-day notice for relocation. During the 120-day period, Subtenant will provide Sublandlord with a relocation plan that includes, but is not limited to, a schedule for relocation and a complete budget of Relocation Costs. Without limiting any of Sublandlord's rights at equity or under law, if Subtenant fails to relocate to the proposed site by the expiration of the 120-day notice period, Subtenant will be solely responsible for all (100%) of the Relocation Costs.

#### 4. RENT

4.1. **Base Rent.** In consideration of the terms and conditions of that certain agreement commonly referred to as the "TIHDI Agreement", Subtenant shall not be required to pay any Base Rent for the entire term of this Sublease.

4.2. **Additional Charges.** Subtenant shall pay any and all real property taxes, possessory interest taxes and other costs, impositions, expenses, or charges hereunder, including, without limitation, (i) landscaping charges associated with the Premises at the rate of \$\_\_\_\_.00 per month (the "Landscaping Charge"), and (ii) all other charges related to the Premises otherwise payable by Subtenant to Sublandlord hereunder, including, without limitation, all utility charges (together, the "Additional Charges"). The Additional Charges shall hereinafter be referred to as the "Rent". All Additional Charges shall be due and payable immediately upon Subtenant's receipt of an invoice from Sublandlord and shall be delinquent if Sublandlord has not received Subtenant's payment on or before the tenth (10<sup>th</sup>) day following Subtenant's receipt of such invoice. Subtenant's obligation to pay Rent, including without limitation late charges and default interest, shall survive the termination of this Sublease.

4.3. **Late Charge.** If Subtenant fails to pay any Rent within ten(10) days after the date the same is due and payable, such unpaid amount will be subject to a late payment charge equal to six percent (6%) of the unpaid amount in each instance. The late payment charge has been agreed upon by Sublandlord and Subtenant, after negotiation, as a reasonable estimate of the additional administrative costs and detriment that Sublandlord will incur as a result of any such failure by Subtenant, the actual costs thereof being extremely difficult if not impossible to determine. The late payment charge constitutes liquidated damages to compensate Sublandlord for its damages resulting from such failure to pay and Subtenant shall promptly pay such charge to Sublandlord together with such unpaid amount.

4.4. **Default Interest.** If any Rent is not paid within ten (10) days following the due date, such unpaid amount shall bear interest from the due date until paid at the rate of the greater

of the interest rate in effect which has been established by the Secretary of Treasury pursuant to Public Law, as described in the Master Lease. However, interest shall not be payable on late charges incurred by Subtenant nor on any amounts on which late charges are paid by Subtenant to the extent this interest would cause the total interest to be in excess of that which an individual is lawfully permitted to charge. Payment of interest shall not excuse or cure any default by Subtenant.

## **5. TAXES, ASSESSMENTS AND OTHER EXPENSES**

### **5.1. Taxes and Assessments, Licenses, Permit Fees and Liens.**

(a) **Payment Responsibility.** Subtenant shall pay any and all real and personal property taxes, including, but not limited to, possessory interest taxes, general and special assessments, excises, licenses, permit fees and other charges and impositions of every description levied on or assessed against the Premises, any Alterations, Subtenant's Personal Property, or Subtenant's use of the Premises or any Alterations during the Term. Subtenant shall make all such payments directly to the charging authority when due and payable and at least ten (10) days prior to delinquency. However, with respect to real property taxes and assessments levied on or assessed against the Premises for which Sublandlord receives the tax bill directly from the taxing authority, Subtenant shall reimburse Sublandlord for payment of such sums immediately upon demand.

(b) **Taxability of Possessory Interest.** Without limiting the foregoing, Subtenant recognizes and agrees that this Sublease may create a possessory interest subject to property taxation and that Subtenant may be subject to the payment of property taxes levied on such interest.

(c) **No Liens.** Subtenant shall not allow or suffer a lien for any taxes payable by Subtenant hereunder to be imposed upon the Premises or upon any equipment or other property located thereon without discharging the same as soon as practicable, and in no event subsequent to delinquency.

(d) **Reporting Information.** Subtenant agrees to provide such information as Sublandlord may request to enable Sublandlord to comply with any possessory interest tax reporting requirements applicable to this Sublease.

**5.2. Other Expenses.** This is a "triple net" Sublease. Accordingly, Subtenant shall be responsible for any and all other charges, costs and expenses related to its use, occupancy, operation or enjoyment of the Premises or any Alterations permitted thereon, including, without limitation, the cost of any utilities, maintenance, janitorial, or other services necessary for Subtenant's use.



5.3. **Evidence of Payment.** Subtenant shall, upon Sublandlord's request, furnish to Sublandlord within ten (10) days after the date when any charges are due and payable, official receipts of the appropriate taxing authority or other evidence reasonably satisfactory to Sublandlord, evidencing payment thereof.

6. **USE; COVENANTS TO PROTECT PREMISES**

6.1. **Subtenant's Permitted Use.** Subtenant may use the Premises to (i) install and construct temporary office structures in accordance with plans to be submitted by Subtenant and approved by Sublandlord and (ii) the provision of support services to the homeless community, which services may include, without limitation, counseling, job training and limited health services and screening activities, all as described in Exhibit D, attached hereto and made a part hereof. No other uses of either the Premises are permitted without the prior written approval of the Executive Director of Sublandlord.

6.2. **Subtenant's Access to the Premises.** As provided in the Master Lease, Subtenant will have access to the Premises on a 24-hour, seven-days-a-week basis, provided however, Subtenant shall coordinate such access with the local representative of Master Landlord.

6.3. **Rules and Regulations.** Subtenant agrees to adhere to all rules and regulations regarding the Premises attached hereto as Exhibit E, and any additional rules regarding security, ingress, egress, safety and sanitation applicable to the Premises, as such rules and regulations may be prescribed by Master Landlord or Sublandlord from time to time and which are provided to Subtenant in advance of the enforcement thereof.

6.4. **Easements.** This Sublease shall be subject to all outstanding easements and rights-of-way for location of any type of facility over, across, in, and upon the Premises or any portion thereof, and to the right of Master Landlord to grant such additional easements and rights-of-way over, across, in and upon the Premises as Master Landlord shall determine to be in the public interest ("Additional Easements"), provided that, as provided in the Master Lease, Master Landlord shall use its best efforts to minimize any interference with Subtenant's operations hereunder caused by the granting of any such Additional Easements and the granting of such Additional Easements shall be conditioned on the assumption by the grantee thereof of liability to Subtenant for such damages as Subtenant shall suffer for property destroyed or property rendered unusable on account of the grantee's exercise of its rights thereunder. There is hereby reserved to the holders of such Additional Easements as are presently outstanding or which may hereafter be granted, to any workers officially engaged in the construction, installation, maintenance, operation, repair or replacement of facilities located thereon, and to any federal, state or local official engaged in the official inspection thereof, such reasonable rights of ingress and egress over the Premises as shall be necessary for the performance of their duties with regard to such facilities. To the best knowledge of the Mayor's Treasure Island Project Office, there are no existing Additional Easements or other encumbrances which would materially interfere with Subtenant's use of the Premises.

6.5. **No Interference with Navy Operations.** Subtenant shall not conduct operations, nor make any Alterations (as defined below), that would interfere with or otherwise restrict Master Landlord's operations or environmental clean-up or restoration actions by the Master Landlord, Sublandlord, the Environmental Protection Agency, the State of California or their contractors. Environmental clean-up, restoration or testing activities by these Parties shall take priority over the Subtenant's use of the Premises in the event of any conflict, provided, however, in such event, Master Landlord and Sublandlord shall use their best efforts to minimize any disruption of Subtenant's operation.

6.6. **No Unlawful Uses, Nuisances or Waste.** Without limiting the foregoing, Subtenant shall not use, occupy or permit the use or occupancy of any of the Premises in any unlawful manner or for any illegal purpose, or permit any offensive, noisy or hazardous use or any waste on or about the Premises. Subtenant shall take all precautions to eliminate any nuisances or hazards relating to its activities on or about the Premises. Subtenant shall not conduct any business, place any sales display, or advertise in any manner in areas outside the Premises or make or allow any of Subtenant's family, domestic partners or guests to make any loud or boisterous noise, or engage in any other objectionable behavior. Subtenant further agrees not to commit, suffer, or permit any waste or nuisance in, on or about the Premises.

## **7. ALTERATIONS**

**7.1. Alterations.** Subtenant shall not construct, install, make or permit to be made any alterations, installations or additions ("Alterations") in, to or about the Premises, without Sublandlord's prior written consent in each instance, which consent may be given or withheld in Sublandlord's sole and absolute discretion. Subject to Sublandlord's consent as provided above, any permitted Alterations shall be done at Subtenant's sole expense (i) in strict accordance with plans and specifications approved in advance by Sublandlord in writing, (ii) by duly licensed and bonded contractors or mechanics approved by Sublandlord, (iii) in a good and professional manner, (iv) in strict compliance with all Laws, and (v) subject to all other conditions that Sublandlord may reasonably impose. In no event shall the construction, installation or the making of any Alterations impair the use or operation of the Property, or any portion thereof, or Sublandlord's or Master Landlord's access thereto. Prior to the commencement of any work on the Premises to construct any permitted Alterations, Subtenant, at its sole expense, shall procure all required permits and approvals and shall promptly upon receipt deliver copies of all such documents to Sublandlord. No material change from the plans and specifications approved by Sublandlord may be made without Sublandlord's prior consent. Sublandlord and Sublandlord's Agents shall have the right to inspect the course of such construction at all times.

**7.2. Ownership of Alterations.** Any Alterations constructed on or affixed to the Premises by or on behalf of Subtenant pursuant to the terms and limitations of Section 7.1 above shall be and remain Subtenant's property during the Term. Upon the termination of this Sublease, Subtenant shall remove all such Alterations from the Premises in accordance with the provisions of Section 18 hereof, unless Sublandlord, at its sole option and without limiting any of the provisions of Section 7.1 above, requires as a condition to approval of any such Alterations that such Alterations remain on the Premises following the expiration or termination of this Sublease or unless Sublandlord as a condition of such approval reserves the right to elect by notice to Subtenant not less than fifteen (15) days prior to the end of the Term to have such Alterations remain on the Premises.

**7.3. Subtenant's Personal Property.** All furniture, furnishings and articles of movable personal property and equipment installed in the Premises by Subtenant that can be removed without structural or other material damage to the Premises (all of which are herein called "Subtenant's Personal Property") shall be and remain the property of Subtenant and may be removed by it subject to the provisions of Section 18 hereof.

**7.4 Building Security During Alterations.** Subtenant shall be solely responsible for providing and maintaining any additional building or other property security systems that Sublandlord may reasonably determine to be necessary as a result of any alterations performed by Subtenant pursuant to this Sublease. Promptly upon receipt of any written direction from Sublandlord to provide additional building or other property security, Subtenant shall install or provide such additional security as required by Sublandlord in the written notice. By way of

example, and not limitation, in the event that Subtenant removes any exterior doors to the Premises as part of any alterations, Subtenant shall install such temporary improvements and take such other measures as Sublandlord may require in order to protect the interior of the Premises (including without limitation any personal property and other occupants of the Premises) from weather conditions and unauthorized intruders. Subtenant shall indemnify, defend and hold harmless Sublandlord from any and all losses, damages, claims, or other causes of action arising out of Subtenant's failure to provide adequate security during the performance of any alterations pursuant to this Sublease.

## **8. REPAIRS AND MAINTENANCE**

**8.1. Subtenant Responsible for Maintenance and Repair.** Subtenant assumes full and sole responsibility for the condition, operation, repair and maintenance and management of the Premises from and after the Commencement Date and shall keep the Premises in good condition and repair. Sublandlord shall not be responsible for the performance of any repairs, changes or alterations to the Premises, nor shall Sublandlord be liable for any portion of the cost thereof. Subtenant shall make all repairs and replacements, interior and exterior, structural as well as non-structural, ordinary as well as extraordinary, foreseen and unforeseen, which may be necessary to maintain the Premises at all times in clean, safe, attractive and sanitary condition and in good order and repair, to Sublandlord's and Master Landlord's reasonable satisfaction, provided, however, that neither Subtenant nor Sublandlord shall be required to make structural repairs or Alterations to correct conditions affecting the Premises existing prior to the Commencement Date. If any portion of the Premises is damaged by any activities conducted by Subtenant or Subtenant's Agents or Subtenant's Invitees hereunder, Subtenant shall immediately, at its sole cost, repair all such damage and restore the Premises to its previous condition.

**8.2. Utilities.** The cost to extend utility service to the Premises shall be borne by the Subtenant and the Sublandlord shall provide the basic building utilities and services described in the attached Exhibit F, (the "Standard Utilities and Services") to the Premises, subject to the terms and conditions contained therein. Subtenant shall be responsible for furnishing, at its sole costs, any utilities or services other than or in excess of the Standard Utilities and Services that Subtenant may need for its use of the Premises.

**8.3. Trash.** Tenant shall be solely responsible for the removal of all trash in the Premises. If Subtenant fails to remove all trash from the Premises, Subtenant shall pay to Sublandlord upon demand and as an Additional Charge all costs incurred by Sublandlord to remove such trash.

**8.4. No Right to Repair and Deduct.** Subtenant expressly waives the benefit of any existing or future Laws or judicial or administrative decision that would otherwise permit Subtenant to make repairs or replacements at Sublandlord's expense, or to terminate this Sublease because of Sublandlord's failure to keep the Premises or any part thereof in good order,

condition or repair, or to abate or reduce any of Subtenant's obligations hereunder on account of the Premises or any part thereof being in need of repair or replacement. Without limiting the foregoing, Subtenant expressly waives the provisions of California Civil Code Sections 1932, 1941 and 1942 or any similar Laws with respect to any right of Subtenant to terminate this Sublease and with respect to any obligations of Sublandlord hereunder or and any right of Subtenant to make repairs or replacements and deduct the cost thereof from Rent.

## 9. LIENS

Subtenant shall keep the Premises free from any liens arising out of any work performed, material furnished or obligations incurred by or for Subtenant. In the event Subtenant does not, within five (5) days following the imposition of any such lien, cause the lien to be released of record by payment or posting of a proper bond, Sublandlord shall have in addition to all other remedies provided herein and by law or equity the right, but not the obligation, to cause the same to be released by such means as it shall deem proper, including, but not limited to, payment of the claim giving rise to such lien. All such sums paid by Sublandlord and all expenses it incurs in connection therewith (including, without limitation, reasonable attorneys' fees) shall be payable to Sublandlord by Subtenant upon demand. Sublandlord shall have the right at all times to post and keep posted on the Premises any notices permitted or required by law or that Sublandlord deems proper for its protection and protection of the Premises from mechanics' and materialmen's liens. Subtenant shall give Sublandlord at least fifteen (15) days' prior written notice of the commencement of any repair or construction on any of the Premises.

## 10. COMPLIANCE WITH LAWS

10.1. Compliance with Laws. Subtenant shall promptly, at its sole expense, maintain the Premises and Subtenant's use and operations thereon in strict compliance at all times with all present and future Laws, whether foreseen or unforeseen, ordinary as well as extraordinary, provided however, that Subtenant shall not be required to make repairs or structural changes to the Premises required solely to correct conditions affecting the Premises existing prior to the Commencement Date or not related to Subtenant's use of the Premises, unless the requirement for such changes is imposed as a result of any Alterations made or requested to be made by Subtenant. Such Laws shall include, without limitation, all Laws relating to health and safety and disabled accessibility including, without limitation, the Americans with Disabilities Act, 42 U.S.C.S. §§ 12101 et seq. and Title 24 of the California Code of Regulations, all present and future Environmental Laws (as defined in this Sublease below). No occurrence or situation arising during the Term, nor any present or future Law, whether foreseen or unforeseen, and however extraordinary, shall give Subtenant any right to seek redress against Sublandlord for failing to comply with any Laws. Subtenant waives any rights now or hereafter conferred upon it by any existing or future Law to compel Sublandlord to make any repairs to comply with any such Laws, on account of any such occurrence or situation.

## **10.2. Regulatory Approvals.**

(a) **Responsible Party.** Subtenant understands and agrees that Subtenant's use of the Premises and construction of Alterations permitted hereunder may require authorizations, approvals or permits from governmental regulatory agencies with jurisdiction over the Premises. Subtenant shall be solely responsible for obtaining any and all such regulatory approvals, including without limitation any demolition permits or approvals. Subtenant shall not seek any regulatory approval without first obtaining the written consent of Sublandlord. Subtenant shall bear all costs associated with applying for, obtaining and maintaining any necessary or appropriate regulatory approval and shall be solely responsible for satisfying any and all conditions imposed by regulatory agencies as part of a regulatory approval. Any fines or penalties levied as a result of Subtenant's failure to comply with the terms and conditions of any regulatory approval shall be immediately paid and discharged by Subtenant, and Sublandlord shall have no liability, monetary or otherwise, for any such fines or penalties. Subtenant shall indemnify, protect, defend and hold harmless forever ("Indemnify") the Sublandlord and City, but not limited to, all of their respective officers, directors, employees, agents, affiliates, subsidiaries, licensees, contractors, boards, commissions, departments, agencies and other subdivisions and each of the persons acting by, through or under each of them, and their respective heirs, legal representatives, successors and assigns, and each of them (the "Indemnified Parties") against any and all claims, demands, losses, liabilities, damages, liens, injuries, penalties, fines, lawsuits and other proceedings, judgments and awards and costs and expenses, including, without limitation, reasonable attorneys' and consultants' fees and costs ("Losses") arising in connection with Subtenant's failure to obtain or comply with the terms and conditions of any regulatory approval.

**10.3. Compliance with Sublandlord's Risk Management Requirements.** Subtenant shall not do anything, or permit anything to be done, in or about the Premises or any Alterations permitted hereunder that would create any unusual fire risk, and shall take commercially reasonable steps to protect Sublandlord from any potential premises liability. Subtenant shall faithfully observe, at its expense, any and all reasonable requirements of Sublandlord's Risk Manager with respect thereto and with the requirements of any policies of commercial general, all risk property or other policies of insurance at any time in force with respect to the Premises, and any Alterations as required hereunder.

## **11. ENCUMBRANCES**

**11.1. Encumbrance By Subtenant.** Notwithstanding anything to the contrary contained in this Sublease, Subtenant shall not under any circumstances whatsoever create any mortgage, deed of trust, assignment of rents, fixture filing, security agreement, or similar security instrument, or other lien or encumbrance or assignment or pledge of an asset as security in any manner against the Premises, or Sublandlord's or Subtenant's interest under this Sublease.



## 12. DAMAGE OR DESTRUCTION

**12.1. Damage or Destruction to the Premises or the License Area.** In the case of damage to or destruction of the Premises by earthquake, fire or any other casualty, not caused by Subtenant or Subtenant's Agents or Subtenant's Invitees, whether insured or uninsured, which prevents Subtenant from operating the Premises or the License Area for the purposes stated herein and the cost of repairing such damage exceeds Ten Thousand Dollars (\$10,000), either Party may terminate this Sublease upon thirty (30) days prior written notice and upon any such termination Subtenant shall surrender the Premises in accordance with Section 18 (except for damage caused by the casualty pursuant to which the Sublease may be terminated under this Section 12.1) and both Parties shall be relieved of any liability for such termination or for repairing such damage. If neither Party terminates this Sublease as provided in this Section 12.1, Subtenant shall, at its sole cost, promptly restore, repair, replace or rebuild the Premises to the condition the Premises was in prior to such damage or destruction, subject to any changes made in strict accordance with the requirements of Section 7.1 above. Under no circumstances shall Sublandlord have any obligation to repair, replace or rebuild the Premises or the License Area in the event of such a casualty.

**12.2. No Abatement in Rent.** In the event of any damage or destruction to the Premises, and if neither party terminates this Sublease as provided in Section 12.1 above, there shall be no abatement in the Rent payable hereunder.

**12.3. Waiver.** The Parties understand and agree that the foregoing provisions of this Section are intended to govern fully the rights and obligations of the Parties in the event of damage or destruction to the Premises or Alterations, and Sublandlord and Subtenant each hereby waives and releases any right to terminate this Sublease in whole or in part under Sections 1932.2 and 1933.4 of the Civil Code of California or under any similar Laws now or hereafter in effect, to the extent such rights are inconsistent with the provisions hereof.

## 13. ASSIGNMENT AND SUBLETTING

**13.1. Restriction on Assignment and Subletting.** Subtenant shall not directly or indirectly (including, without limitation, by merger, acquisition or other transfer of any controlling interest in Subtenant), voluntarily or by operation of Law, sell, assign, encumber, pledge or otherwise transfer any part of its interest in or rights with respect to the Premises, any Alterations or its interest in this Sublease, or permit any portion of the Premises to be occupied by anyone other than itself, or sublet any portion of the Premises, without Sublandlord's prior written consent in each instance, which Sublandlord may grant or withhold in its sole and absolute discretion.

## 14. DEFAULT; REMEDIES

**14.1. Events of Default.** Any of the following shall constitute an event of default ("Event of Default") by Subtenant hereunder:

(a) **Rent.** Any failure to pay Rent or other sums, including sums due for utilities, within five (5) days after such sums are due;

(b) **Covenants, Conditions and Representations.** Any failure to perform or comply with any other covenant, condition or representation made under this Sublease, provided Subtenant shall have a period of ten (10) days from the date of written notice from Sublandlord of such failure within which to cure such default under this Sublease, or, if such default is not capable of cure within such 10-day period, Subtenant shall have a reasonable period to complete such cure if Subtenant promptly undertakes action to cure such default within such 10-day period and thereafter diligently prosecutes the same to completion and uses its best efforts to complete such cure within sixty (60) days after the receipt of notice of default from Sublandlord.

(c) **Vacation or Abandonment.** Any abandonment of the Premises for more than fourteen (14) consecutive days; and

(d) **Bankruptcy.** The appointment of a receiver to take possession of all or substantially all of the assets of Subtenant, or an assignment by Subtenant for the benefit of creditors, or any action taken or suffered by Subtenant under any insolvency, bankruptcy, reorganization, moratorium or other debtor relief act or statute, whether now existing or hereafter amended or enacted.

**14.2. Remedies.** Upon the occurrence of an Event of Default by Subtenant, Sublandlord shall have the following rights and remedies in addition to all other rights and remedies available to Sublandlord at Law or in equity:

(a) **Terminate Sublease and Recover Damages.** The rights and remedies provided by law California Civil Code Section 1951.2 (damages on termination for breach), including, but not limited to, the right to terminate Subtenant's right to possession of the Premises and to recover the worth at the time of award of the amount by which the unpaid Rent for the balance of the Term after the time of award exceeds the amount of rental loss for the same period that Subtenant proves could be reasonably avoided, as computed pursuant to subsection (b) of such Section 1951.2. Sublandlord's efforts to mitigate the damages caused by Subtenant's breach of this Sublease shall not waive Sublandlord's rights to recover unmitigated damages upon termination.

(b) **Appointment of Receiver.** The right to have a receiver appointed for Subtenant upon application by Sublandlord to take possession of the Premises and to apply any rental collected from the Premises and to exercise all other rights and remedies granted to Sublandlord pursuant to this Sublease.



**14.3. Sublandlord's Right to Cure Subtenant's Defaults.** If Subtenant defaults in the performance of any of its obligations under this Sublease, then Sublandlord may at any time thereafter with three (3) days prior written notice (except in the event of an emergency as determined by Sublandlord), remedy such Event of Default for Subtenant's account and at Subtenant's expense. Subtenant shall pay to Sublandlord, as Additional Charges, promptly upon demand, all sums expended by Sublandlord, or other costs, damages, expenses or liabilities incurred by Sublandlord, including, without limitation, reasonable attorneys' fees, in remedying or attempting to remedy such Event of Default. Subtenant's obligations under this Section shall survive the termination of this Sublease. Nothing herein shall imply any duty of Sublandlord to do any act that Subtenant is obligated to perform under any provision of this Sublease, and Sublandlord's cure or attempted cure of Subtenant's Event of Default shall not constitute a waiver of Subtenant's Event of Default or any rights or remedies of Sublandlord on account of such Event of Default.

## **15. RELEASE AND WAIVER OF CLAIMS; INDEMNIFICATION**

**15.1. Release and Waiver of Claims.** Subtenant, on behalf of itself and Subtenant's Agents, covenants and agrees that Sublandlord, its officers, agents, employees, contractors or subcontractors (collectively, the "Indemnified Parties") shall not be responsible for or liable to Subtenant for, and, to the fullest extent allowed by any Laws, Subtenant hereby waives all rights against the Indemnified Parties and releases them from, any and all Losses, including, but not limited to, incidental and consequential damages, relating to any injury, accident or death of any person or loss or damage to any property, in or about the Premises, from any cause whatsoever, including without limitation, partial or complete collapse of any building or other improvement due to an earthquake or subsidence, except only to the extent such Losses are caused exclusively by the gross negligence or willful misconduct of the Indemnified Parties (except as provided in Section 15.1(e) below). Without limiting the generality of the foregoing:

(a) Subtenant expressly acknowledges and agrees that the Rent payable hereunder does not take into account any potential liability of the Indemnified Parties for any consequential or incidental damages including, but not limited to, lost profits arising out of disruption to Subtenant's uses hereunder. Sublandlord would not be willing to enter into this Sublease in the absence of a complete waiver of liability for consequential or incidental damages due to the acts or omissions of the Indemnified Parties, and Subtenant expressly assumes the risk with respect thereto. Accordingly, without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action for consequential and incidental damages and covenants not to sue the Indemnified Parties for such damages arising out of this Sublease or the uses authorized hereunder, including, without limitation, any interference with uses conducted by Subtenant pursuant to this Sublease regardless of the cause.

(b) Without limiting any indemnification obligations of Subtenant or other waivers contained in this Sublease and as a material part of the consideration for this Sublease, Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all claims, demands, rights, and causes of action against, and covenants not to sue the Indemnified Parties under any present or future Laws, statutes, or regulations, including, but not limited to, any claim for inverse condemnation or the payment of just compensation under the law of eminent domain, or otherwise at equity, in the event that Sublandlord terminates this Sublease because of such claim for inverse condemnation or eminent domain.

(c) As part of Subtenant's agreement to accept the Premises in its "As Is" condition as provided herein, and without limiting such agreement and any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the physical or environmental condition of the Premises and any related improvements or any Laws or regulations applicable thereto or the suitability of the Premises for Subtenant's intended use.

(d) Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated, and Subtenant fully RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses and any and all claims, demands or rights against any of the Indemnified Parties under any present and future Laws, including, without limitation, any and all claims for relocation benefits or assistance from the Indemnified Parties under federal and state relocation assistance laws.

(e) Without limiting any other waiver contained herein, Subtenant on behalf of itself and its successors and assigns, hereby waives its right to recover from, and forever RELEASES, WAIVES AND DISCHARGES, the Indemnified Parties from any and all Losses, whether direct or indirect, known or unknown, foreseen and unforeseen, that may arise on account of or in any way be connected with the Indemnified Parties decision to Sublease the Premises to the Subtenant, regardless of whether or not such decision is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties.

(f) Subtenant covenants and agrees never to file, commence, prosecute or cause to be filed, commenced or prosecuted against the Indemnified Parties any claim, action or proceeding based upon any claims, demands, causes of action, obligations, damages, losses, costs, expenses or liabilities of any nature whatsoever encompassed by the waivers and releases set forth in this Section 15.1.

(g) In executing these waivers and releases, Subtenant has not relied upon any representation or statement other than as expressly set forth herein.

(h) Subtenant has made such investigation of the facts pertaining to these waivers and releases it deems necessary and assumes the risk of mistake with respect to such facts. These waivers and releases are intended to be final and binding on Subtenant regardless of any claims of mistake.

(i) In connection with the foregoing releases, Subtenant acknowledges that it is familiar with Section 1542 of the California Civil Code, which reads:

**A general release does not extend to claims which the creditor does not know or suspect to exist in his favor at the time of executing the release, which if known by him must have materially affected his settlement with the debtor.**

Subtenant acknowledges that the releases contained herein includes all known and unknown, disclosed and undisclosed, and anticipated and unanticipated claims. Subtenant realizes and acknowledges that it has agreed upon this Sublease in light of this realization and, being fully aware of this situation, it nevertheless intends to waive the benefit of Civil Code Section 1542, or any statute or other similar law now or later in effect. The waivers and releases contained herein shall survive any termination of this Sublease.

**15.2. Subtenant's Indemnity.** Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties from and against any and all Losses, expressly including but not limited to, any Losses arising out of a partial or complete collapse of any building or other improvement due to an earthquake or subsidence, incurred in connection with or arising directly or indirectly, in whole or in part, out of: (a) any damage to or destruction of any property owned by or in the custody of Subtenant or Subtenant's Agents or Subtenant's Invitees, (b) any accident, injury to or death of a person, including, without limitation, Subtenant's Agents and Subtenant's Invitees, howsoever or by whomsoever caused, occurring in, on or about the Premises (c) any default by Subtenant in the observation or performance of any of the terms, covenants or conditions of this Sublease to be observed or performed on Subtenant's part; (d) the use, occupancy, conduct or management, or manner of use, occupancy, conduct or management by Subtenant, Subtenant's Agents or Subtenant's Invitees or any person or entity claiming through or under any of them, of the Premises, or any Alterations; (e) the condition of the Premises, including any buildings or other improvements thereon, (f) any construction or other work undertaken by Subtenant on or about the Premises whether before or during the Term of this Sublease; or (g) any acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees, or of any trespassers, in, on or about the Premises, or any Alterations; except to the extent that such Indemnity is void or otherwise unenforceable under any applicable Laws in effect on or validly retroactive to the date of this Sublease and further except only to the extent such Losses are caused by the gross negligence and intentional wrongful acts and omissions of the Indemnified Parties. Notwithstanding the foregoing, Subtenant's obligations to

indemnify the Indemnified Parties under this Section 15.2 shall remain in full force and effect regardless of whether or not the Indemnified Parties' decision to enter into this Sublease for the Premises, given the seismic condition of the property, is or may be determined to be an act of gross negligence or willful misconduct of the Indemnified Parties. The foregoing Indemnity shall include, without limitation, reasonable fees of attorneys, consultants and experts and related costs and Sublandlord's costs of investigating any Loss. Subtenant specifically acknowledges and agrees that it has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within this indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter. Subtenant's obligations under this Section shall survive the expiration or sooner termination of this Sublease. Notwithstanding anything contained herein, to the extent such Losses are not covered by insurance required herein and subject to Section 12.1 above, Subtenant shall have no obligation to repair, restore or reconstruct the Premises or the License Area (or to pay for the same) in the event the Premises are damaged or destroyed by an earthquake or subsidence or by any other uninsured casualty.

## 16. INSURANCE

**16.1. Subtenant's Insurance.** Within five (5) days of the Commencement Date, Subtenant shall procure and maintain throughout the Term of this Sublease and pay the cost thereof the following insurance:

(a) **Property Insurance.** Subtenant shall procure and maintain, at its own cost, a standard fire and extended coverage insurance policy insuring the Premises, including, without limitation, any buildings and all fixtures, Alterations, furniture and equipment located thereon, in an amount not less than the full replacement value.

(b) **Public Liability and Other Insurance.** Subtenant shall at all times, at its cost, also maintain insurance for the mutual benefit of Sublandlord and Subtenant against:

(i) Claims for personal injury under a policy of commercial general liability insurance, including without limitation, liquor liability insurance, claims for bodily injury, property damage or employer's liability occurring in or upon the Premises arising from earthquakes or subsidence, in an amount not less than \$1,000,000 combined single limit. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CG-00-01-11-88.

(ii) Worker's compensation insurance with employer's liability insurance covering all persons employed and with respect to whom death or bodily injury claims could be asserted against Sublandlord, Subtenant, the Premises, or any other Sublandlord property, in an amount not less than \$1,000,000 each accident.

(iii) Automobile liability insurance with limits not less than \$1,000,000 each occurrence combined single limit for bodily injury and property damage, including owned and non-owned and hired vehicles, if Subtenant uses automobiles in connection with its use of the Premises. Such insurance shall provide coverage at least as broad as provided under Insurance Service Form Number CA-00-01-06-92.

**16.2. General Requirements.** All insurance provided for under this Sublease shall be effected under valid enforceable policies issued by insurers of recognized responsibility and reasonably approved by Sublandlord.

(a) Should any of the required insurance be provided under a claims-made form, Subtenant shall maintain such coverage continuously throughout the term hereof and, without lapse, for a period of three (3) years beyond the expiration or termination of this Sublease, to the effect that, should occurrences during the Term give rise to claims made after expiration or termination of this Sublease, such claims shall be covered by such claims-made policies.

(b) Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general aggregate limit shall double the occurrence or claims limits specified above.

(c) All liability insurance policies shall be endorsed to provide the following:

(i) Cover Subtenant as the insured and the Sublandlord and the Master Landlord as additional insureds.

(ii) That such policies are primary insurance to any other insurance available to the additional insureds, with respect to any claims arising out of this Sublease, and that insurance applies separately to each insured against whom claim is made or suit is brought. Such policies shall also provide for severability of interests and that an act or omission of one of the named insureds which would void or otherwise reduce coverage shall not reduce or void the coverage as to any insured, and shall afford coverage for all claims based on acts, omissions, injury or damage which occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period.

(iii) All policies shall be endorsed to provide thirty (30) days' advance written notice to Sublandlord of cancellation, non-renewal or reduction in coverage, mailed to the address(es) for Sublandlord set forth in Section 20.1 below.

**16.3. Proof of Insurance.** Subtenant shall deliver to Sublandlord certificates of insurance in form and with insurers satisfactory to Sublandlord, evidencing the coverages required hereunder, on or before the Commencement Date, together with complete copies of the policies promptly upon Sublandlord's request, and Subtenant shall provide Sublandlord with certificates or policies thereafter at least thirty (30) days before the expiration dates of expiring policies. As to the insurance required pursuant to Section 16.1(b)(1) above, such certificate shall state, among other things, that such insurance coverage includes and shall cover Subtenant's indemnity obligations under Section 15.2 above. In the event Subtenant shall fail to procure such insurance, or to deliver such policies or certificates, Sublandlord may, at its option, procure the same for the account of Subtenant, and the cost thereof shall be paid to Sublandlord within five (5) days after delivery to Subtenant of bills therefor.

**16.4. No Limitation on Indemnities.** Subtenant's compliance with the provisions of this Section shall in no way relieve or decrease Subtenant's indemnification obligations herein or any of Subtenant's other obligations or liabilities under this Sublease.

**16.5. Lapse of Insurance.** Notwithstanding anything to the contrary in this Sublease, Sublandlord may elect in Sublandlord's sole and absolute discretion to terminate this Sublease upon the lapse of any required insurance coverage by written notice to Subtenant.

**16.6. Subtenant's Personal Property.** Subtenant shall be responsible, at its expense, for separately insuring Subtenant's Personal Property.

**16.7. Waiver of Subrogation.** Notwithstanding anything to the contrary contained herein, to the extent permitted by their respective policies of insurance, Sublandlord and Subtenant each hereby waive any right of recovery against the other party and against any other party maintaining a policy of insurance covering the Premises, and their contents, or any portion thereof, for any loss or damage maintained by such other party with respect to the Premises, or any portion thereof or the contents of the same or any operation therein, whether or not such loss is caused by the fault or negligence of such other party. If any policy of insurance relating to the Premises carried by Subtenant does not permit the foregoing waiver or if the coverage under any such policy would be invalidated due to such waiver, Subtenant shall obtain, if possible, from the insurer under such policy a waiver of all rights of subrogation the insurer might have against Sublandlord or any other party maintaining a policy of insurance covering the same loss, in connection with any claim, loss or damage covered by such policy.

## **17. ACCESS BY SUBLANDLORD**

### **17.1. Access to Premises by Sublandlord.**

(a) **General Access.** Sublandlord reserves for itself and Sublandlord's Agents, the right to enter the Premises and any portion thereof at all reasonable times upon not



less than twenty-four (24) hours oral or written notice to Subtenant (except in the event of an emergency) for any purpose.

(b) **Emergency Access.** In the event of any emergency, as determined by Sublandlord, Sublandlord may, at its sole option and without notice, enter the Premises and alter or remove any Alterations or Subtenant's Personal Property on or about the Premises. Sublandlord shall have the right to use any and all means Sublandlord considers appropriate to gain access to any portion of the Premises in an emergency. In such case, Sublandlord shall not be responsible for any damage or injury to any such property, nor for the replacement of any such property and any such emergency entry shall not be deemed to be a forcible or unlawful entry onto or a detainer of, the Premises, or an eviction, actual or constructive, of Subtenant from the Premises or any portion thereof.

(c) **No Liability.** Sublandlord shall not be liable in any manner, and Subtenant hereby waives any claims, for any inconvenience, disturbance, loss of business, nuisance or other damage arising out of Sublandlord's entry onto the Premises, except damage resulting directly and exclusively from the gross negligence or willful misconduct of Sublandlord or Sublandlord's Agents and not contributed to by the acts, omissions or negligence of Subtenant, Subtenant's Agents or Subtenant's Invitees.

17.2. **Access to Premises by Master Landlord.** Subtenant acknowledges and agrees that Master Landlord shall have all of the rights of access to the Premises described in the Master Lease.

## 18. SURRENDER

18.1. **Surrender of the Premises.** Upon the termination of this Sublease, Subtenant shall surrender to Sublandlord the Premises in the same condition as of the Commencement Date, ordinary wear and tear excepted, and free and clear of all liens, easements and other Encumbrances created or suffered by, through or under Subtenant. On or before any termination hereof, Subtenant shall, at its sole cost, remove any and all of Subtenant's Personal Property from the Premises and demolish and remove any and all Alterations from the Premises (except for any Alterations that Sublandlord agrees are to remain part of the Premises pursuant to the provisions of Section 7.3 above). In addition, Subtenant shall, at its sole expense, repair any damage to the Premises resulting from the removal of any such items and restore the Premises to their condition immediately prior to the presence of any Alterations. In connection therewith, Subtenant shall obtain any and all necessary permits and approvals, including, without limitation, any environmental permits, and execute any manifests or other documents necessary to complete the demolition, removal or restoration work required hereunder. Subtenant's obligations under this Section shall survive the termination of this Sublease. Any items of Subtenant's Personal Property remaining on or about the Premises after the termination of this Sublease may, at Sublandlord's option and after thirty (30) days written notice to Subtenant, be deemed abandoned

and in such case Sublandlord may dispose of such property in accordance with Section 1980 et seq. of the California Civil Code or in any other manner allowed by Law.

If Subtenant fails to surrender the Premises to Sublandlord upon the termination of this Sublease as required by this Section, Subtenant shall Indemnify Sublandlord against all Losses resulting therefrom, including, without limitation, Losses made by a succeeding Subtenant resulting from Subtenant's failure to surrender the Premises.

## 19. HAZARDOUS MATERIALS

19.1. **No Hazardous Materials.** Subtenant covenants and agrees that neither Subtenant nor any of Subtenant's Agents or Subtenant's Invitees shall cause or permit any material that, because of its quantity, concentration or physical or chemical characteristics, is deemed by any federal, state or local governmental authority to pose a present or potential hazard to human health or safety or to the environment, including, without limitation, any material or substance defined as a "hazardous substance," or "pollutant" or "contaminant" pursuant to the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA", also commonly known as the "Superfund" law), as amended, (42 U.S.C. Sections 9601 et seq.) or pursuant to Section 25281 of the California Health & Safety Code; any "hazardous waste" listed pursuant to Section 25140 of the California Health & Safety Code; any asbestos and asbestos containing materials whether or not such materials are part of the structure of any existing improvements on the Premises, or are naturally occurring substances on, in or about the Premises; and petroleum, including crude oil or any fraction thereof, and natural gas or natural gas liquids ("Hazardous Material") to be brought upon, kept, used, stored, generated or disposed of in, on or about the Premises or transported to or from the Premises without the prior written approval of Sublandlord, which approval may be withheld in Sublandlord's sole and absolute discretion. Subtenant shall immediately notify Sublandlord if and when Subtenant learns or has reason to believe there has been any release of Hazardous Material in, on or about the Premises. Sublandlord may from time to time request Subtenant to provide adequate information for Sublandlord to determine that any Hazardous Material permitted hereunder is being handled in compliance with all applicable federal, state or local Laws or policies relating to Hazardous Material (including, without limitation, its use, handling, transportation, production, disposal, discharge or storage) or to human health and safety, industrial hygiene or environmental conditions in, on, under or about the Premises and any other property, including, without limitation, soil, air and groundwater conditions ("Environmental Laws"), and Subtenant shall promptly provide all such information. Sublandlord and Sublandlord's Agents shall have the right to inspect the Premises for Hazardous Material and compliance with the provisions hereof at all reasonable times upon reasonable advance oral or written notice to Subtenant (except in the event of an emergency). Without limiting the foregoing, Subtenant acknowledges and agrees that it shall be bound by and will comply with the environmental protection provisions provided for in Section 13 of the Master Lease.



**19.2. Subtenant's Environmental Indemnity.** If Subtenant breaches any of its obligations contained in Section 19.1 above, or, if any act or omission or negligence of Subtenant or any of Subtenant's Agents or Subtenant's Invitees results in any spilling, leaking, pumping, pouring, emitting, discharging, injecting, escaping, leeching or dumping ("Release") of Hazardous Material in, on, under or about the Premises, without limiting Subtenant's general Indemnity contained in Section 15.2 above, Subtenant, on behalf of itself and Subtenant's Agents, shall Indemnify the Indemnified Parties, and each of them, from and against all any and all enforcement, investigation, remediation or other governmental or regulatory actions, agreements or orders threatened, instituted or completed pursuant to any Environmental Laws together with any and all Losses made or threatened by any third party against Sublandlord, Sublandlord's Agents, or the Premises relating to damage, contribution, cost recovery compensation, loss or injury resulting from the presence, Release or discharge of any Hazardous Materials, including, without limitation, Losses based in common law, investigation and remediation costs, fines, natural resource damages, damages for decrease in value of the Premises, the loss or restriction of the use or any amenity of the Premises and attorneys' fees and consultants' fees and experts' fees and costs ("Hazardous Materials Claims") arising during or after the Term of this Sublease and relating to such Release. The foregoing Indemnity includes, without limitation, all costs associated with the investigation and remediation of Hazardous Material and with the restoration of the Premises to its prior condition including, without limitation, fines and penalties imposed by regulatory agencies, natural resource damages and losses, and revegetation of the Premises or other Sublandlord property. Without limiting the foregoing, if Subtenant or any of Subtenant's Agents or Subtenant's Invitees, causes or permits the Release of any Hazardous Materials in, on, under or about the Premises Subtenant shall, immediately, at no expense to Sublandlord, take any and all appropriate actions to return the Premises or other Sublandlord property affected thereby to the condition existing prior to such Release and otherwise investigate and remediate the Release in accordance with all Environmental Laws. Subtenant shall provide Sublandlord with written notice of and afford Sublandlord a full opportunity to participate in any discussions with governmental regulatory agencies regarding any settlement agreement, cleanup or abatement agreement, consent decree, permit, approvals, or other compromise or proceeding involving Hazardous Material. Notwithstanding anything to the contrary, Subtenant shall not be liable or responsible for any environmental conditions or concerns (including but not limited to any requirement to investigate, remediate or remove any Hazardous Material pursuant to any local, state or federal rule, regulation or statute) that relate to Hazardous Material present on or about the Property prior to the date of this Sublease ("Preexisting Environmental Conditions"). The parties hereby acknowledge and agree that, pursuant to Section 330 of Public Law 102-484, as amended, Master Landlord shall hold harmless, defend and indemnify (the "Section 330 Indemnity") the Authority and Subtenant from and against any suit, claim, demand, action, liability, judgment, cost or fee, arising out of any claim for personal injury or property damage (including death, illness, loss of or damage to property or economic loss) that results from, or is in any manner predicated upon, the release or threatened release of any hazardous substance, pollutant, contaminant, petroleum product, or petroleum derivative from or on the Premises as a result of Department of Defense

activities on the Premises.

**19.3. Acknowledgment of Receipt of EBS and FOSL Reports.** Subtenant hereby acknowledges for itself and Subtenant's Agents that, prior to the execution of this Sublease, it has received and reviewed the Environmental Baseline Survey ("EBS") and the Finding of Suitability to Lease ("FOSL") described in Section 7 of the Master Lease.

## **20. GENERAL PROVISIONS**

**20.1. Notices.** Except as otherwise expressly provided in this Sublease, any notice given hereunder shall be effective only in writing and given by delivering the notice in person, or by sending it first class mail or certified mail with a return receipt requested or reliable commercial overnight courier, return receipt requested, with postage prepaid as follows:

Notice Address of Sublandlord	Treasure Island Development Authority Treasure Island Project Office 401 Palm Avenue Building 1, 2 <sup>nd</sup> Floor Treasure Island Attn: Executive Director Fax No.: (415) 274-0299 Telephone: (415) 274-0660
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with a copy to:	Office of the City Attorney City Hall, Room 234 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102-4682 Attn: Donnell W. Choy Fax No.: (415) 554-4755 Telephone: (415) 554-4736
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Notice Address of Subtenant:	[ To be filled in ]
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Notice Address of Master Landlord:	Commanding Officer (Code 24) Engineering Field Activity West Naval Facilities Engineering Command
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Any Party hereunder may designate a new address for notice purposes hereunder at least ten (10) days prior to the effective date of such change. Any notice hereunder shall be deemed to have been given two (2) days after the date when it is mailed if sent by first class or certified mail, one day after the date it is made, if sent by commercial overnight carrier, or upon the date personal delivery is made, and any refusal by either Party to accept the attempted delivery of any notice, if such attempted delivery is in compliance with this Section 20.1 and applicable Laws, shall be deemed receipt of such notice..

**20.2. No Implied Waiver.** No failure by Sublandlord to insist upon the strict performance of any obligation of Subtenant under this Sublease or to exercise any right, power or remedy arising out of a breach thereof, irrespective of the length of time for which such failure continues, no acceptance of full or partial Rent during the continuance of any such breach, and no acceptance of the keys to or possession of the Premises prior to the expiration of the Term by any Agent of Sublandlord, shall constitute a waiver of such breach or of Sublandlord's right to demand strict compliance with such term, covenant or condition or operate as a surrender of this Sublease. No express written waiver of any default or the performance of any provision hereof shall affect any other default or performance, or cover any other period of time, other than the default, performance or period of time specified in such express waiver. One or more written waivers of a default or the performance of any provision hereof shall not be deemed to be a waiver of a subsequent default or performance. The consent of Sublandlord given in any instance under the terms of this Sublease shall not relieve Subtenant of any obligation to secure the consent of Sublandlord in any other or future instance under the terms of this Sublease.

**20.3. Amendments.** Neither this Sublease nor any term or provisions hereof may be changed, waived, discharged or terminated, except by a written instrument signed by the Parties hereto.

**20.4. Authority.** If Subtenant signs as a corporation, a partnership or a limited liability company, each of the persons executing this Sublease on behalf of Subtenant does hereby covenant and warrant that Subtenant is a duly authorized and existing entity, that Subtenant has and is qualified to do business in California, that Subtenant has full right and authority to enter into this Sublease, and that each and all of the persons signing on behalf of Subtenant are authorized to do so. Upon Sublandlord's request, Subtenant shall provide Sublandlord with evidence reasonably satisfactory to Sublandlord confirming the foregoing representations and warranties. Without limiting the generality of the foregoing, Subtenant represents and warrants that it has full power to make the waivers and releases, indemnities and the disclosure set forth herein, and that it has received independent legal advice from its attorney as to the advisability of entering into a sublease containing those provisions and their legal effect.

**20.5. Joint and Several Obligations.** The word "Subtenant" as used herein shall include the plural as well as the singular. If there is more than one Subtenant, the obligations and liabilities under this Sublease imposed on Subtenant shall be joint and several.

**20.6. Interpretation of Sublease.** The captions preceding the articles and sections of this Sublease and in the table of contents have been inserted for convenience of reference only and such captions shall in no way define or limit the scope or intent of any provision of this Sublease. This Sublease has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with herein and shall be interpreted to achieve the intents and purposes of the Parties, without any presumption against the party responsible for drafting any part of this Sublease. Provisions in this Sublease relating to number of days shall be calendar days, unless otherwise specified, provided that if the last day of any period to give notice, reply to a notice or to undertake any other action occurs on a Saturday, Sunday or a bank or Sublandlord holiday, then the last day for undertaking the action or giving or replying to the notice shall be the next succeeding business day. Use of the word "including" or similar words shall not be construed to limit any general term, statement or other matter in this Sublease, whether or not language of non-limitation, such as "without limitation" or similar words, are used. Unless otherwise provided herein, whenever the consent of Sublandlord is required to be obtained by Subtenant hereunder, Sublandlord may give or withhold such consent in its sole and absolute discretion.

**20.7. Successors and Assigns.** Subject to the provisions of Section 13, the terms, covenants and conditions contained in this Sublease shall bind and inure to the benefit of Sublandlord and Subtenant and, except as otherwise provided herein, their personal representatives and successors and assigns; provided, however, that upon any transfer by Sublandlord (or by any subsequent Sublandlord) of its interest in the Premises as lessee, including any transfer by operation of Law, Sublandlord (or any subsequent Sublandlord) shall be relieved from all subsequent obligations and liabilities arising under this Sublease subsequent to such transfer.

**20.8. Brokers.** Neither party has had any contact or dealings regarding the leasing of the Premises, or any communication in connection therewith, through any licensed real estate broker or other person who could claim a right to a commission or finder's fee in connection with the Sublease contemplated herein. In the event that any broker or finder perfects a claim for a commission or finder's fee based upon any such contact, dealings or communication, the party through whom the broker or finder makes a claim shall be responsible for such commission or fee and shall indemnify the other party from any and all Losses incurred by the indemnified party in defending against the same. The provisions of this Section shall survive any termination of this Sublease.

**20.9. Severability.** If any provision of this Sublease or the application thereof to any person, entity or circumstance shall, to any extent, be invalid or unenforceable, the remainder of

this Sublease, or the application of such provision to persons, entities or circumstances other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each other provision of this Sublease shall be valid and be enforceable to the fullest extent permitted by Law.

**20.10. Governing Law.** This Sublease shall be construed and enforced in accordance with the Laws of the State of California and the federal government.

**20.11. Entire Agreement.** This instrument (including the exhibits hereto, which are made a part of this Sublease) contains the entire agreement between the Parties and supersedes all prior written or oral negotiations, discussions, understandings and agreements. The Parties further intend that this Sublease shall constitute the complete and exclusive statement of its terms and that no extrinsic evidence whatsoever (including prior drafts of this Sublease and any changes therefrom) may be introduced in any judicial, administrative or other legal proceeding involving this Sublease. Subtenant hereby acknowledges that neither Sublandlord nor Sublandlord's Agents have made any representations or warranties with respect to the Premises or this Sublease except as expressly set forth herein, and no rights, easements or licenses are or shall be acquired by Subtenant by implication or otherwise unless expressly set forth herein. Notwithstanding the foregoing, the Parties shall make a good faith effort to negotiate mutually acceptable changes to this Sublease, if any, within ninety (90) days of the date hereof, provided however, that such changes, if any, shall be subject to the approval of the Master Landlord.

**20.12. Attorneys' Fees.** In the event that either Sublandlord or Subtenant fails to perform any of its obligations under this Sublease or in the event a dispute arises concerning the meaning or interpretation of any provision of this Sublease, the defaulting party or the party not prevailing in such dispute, as the case may be, shall pay any and all costs and expenses incurred by the other party in enforcing or establishing its rights hereunder (whether or not such action is prosecuted to judgment), including, without limitation, court costs and reasonable attorneys' fees.

**20.13. Time of Essence.** Time is of the essence with respect to all provisions of this Sublease in which a definite time for performance is specified.

**20.14. Cumulative Remedies.** All rights and remedies of either party hereto set forth in this Sublease shall be cumulative, except as may otherwise be provided herein.

**20.15. Survival of Indemnities.** Termination of this Sublease shall not affect the right of either party to enforce any and all indemnities and representations and warranties given or made to the other party under this Sublease, nor shall it affect any provision of this Sublease that expressly states it shall survive termination hereof. Subtenant specifically acknowledges and agrees that, with respect to each of the indemnities contained in this Sublease, Subtenant has an immediate and independent obligation to defend Sublandlord and the other Indemnified Parties from any claim which actually or potentially falls within the indemnity provision even if such allegation is or may be groundless, fraudulent or false, which obligation arises at the time such claim is tendered to Subtenant by Sublandlord and continues at all times thereafter.

**20.16. Relationship of Parties.** Sublandlord is not, and none of the provisions in this Sublease shall be deemed to render Sublandlord, a partner in Subtenant's business, or joint venturer or member in any joint enterprise with Subtenant. This Sublease is not intended nor shall it be construed to create any third party beneficiary rights in any third party, unless otherwise expressly provided. The granting of this Sublease by Sublandlord does not constitute authorization or approval by Sublandlord of any activity conducted by Subtenant on, in or relating to the Premises.

**20.17. Recording.** Subtenant agrees that it shall not record this Sublease nor any memorandum or short form hereof in the official records of any county.

**20.18. Non-Liability of Indemnified Parties' officials, employees and Agents.** No elective or appointive board, commission, member, officer or employee of any of the Indemnified Parties shall be personally liable to Subtenant, its successors and assigns, in the event of any default or breach by Sublandlord or for any amount which may become due to Subtenant, its successors and assigns, or for any obligation of Sublandlord under this Agreement.

**20.19. No Discrimination.** Subtenant shall comply with the non-discrimination provisions of Section 19.1 of the Master Lease, including, without limitation, posting all notices required therein.

**20.20. Counterparts.** This Sublease may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument.

**20.21. Master Landlord's Consent.** This Sublease is expressly conditioned upon receipt of the written consent of Master Landlord

## **21. SPECIAL PROVISIONS**

**21.1. Signs.** Subtenant agrees that it will not erect or maintain, or permit to be erected or maintained, any signs, notices or graphics upon or about the Premises which are visible in or



from public corridors or other portions of any common areas of any buildings on the Premises or from the exterior of the Premises, without Sublandlord's prior written consent, which Sublandlord may withhold or grant in its sole discretion.

**21.2. Public Transit Information.** Subtenant shall establish and carry on during the Term a program to encourage maximum use of public transportation by personnel of Subtenant employed on the Premises, including, without limitation, the distribution to such employees of written materials explaining the convenience and availability of public transportation facilities adjacent or proximate to any buildings on the Premises and encouraging use of such facilities, all at Subtenant's sole expense.

**21.3. Non-Discrimination.**

(a) Covenant Not to Discriminate. In the performance of this Sublease, Subtenant covenants and agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any City employee working with, or applicant for employment with, Subtenant in any of Subtenant's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Subtenant.

(b) Subleases and Other Subcontracts. Subtenant shall include in all Subleases and other subcontracts relating to the Premises a non-discrimination clause applicable to such subtenant or other subcontractor in substantially the form of subsection (a) above. In addition, Subtenant shall incorporate by reference in all subleases and other subcontracts the provisions of Sections 12B.2(a), 12B.2(c)-(k), and 12C.3 of the San Francisco Administrative Code and shall require all subtenants and other subcontractors to comply with such provisions. Subtenant's failure to comply with the obligations in this subsection shall constitute a material breach of this Sublease.

(c) Non-Discrimination in Benefits. Subtenant does not as of the date of this Sublease and will not during the Term, in any of its operations in San Francisco or where the work is being performed for the City or elsewhere within the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in Section 12B.2(b) of the San Francisco Administrative Code.

(d) HRC Form. Subtenant shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (Form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission (the "HRC").

(e) Incorporation of Administrative Code Provisions by Reference. The provisions of Chapters 12B and 12C of the San Francisco Administrative Code relating to non-discrimination by parties contracting for the lease of City property are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Subtenant shall comply fully with and be bound by all of the provisions that apply to this Sublease under such Chapters of the Administrative Code, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Subtenant understands that pursuant to Section 12B.2(h) of the San Francisco Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Sublease may be assessed against Subtenant and/or deducted from any payments due Subtenant.

**21.4. No Relocation Assistance; Waiver of Claims**. Subtenant acknowledges that it will not be a displaced person at the time this Sublease is terminated or expires by its own terms, and Subtenant fully RELEASES, WAIVES AND DISCHARGES forever any and all Claims against, and covenants not to sue, Sublandlord, its departments, commissions, officers, directors and employees, and all persons acting by, through or under each of them, under any laws, including, without limitation, any and all claims for relocation benefits or assistance from Sublandlord under federal and state relocation assistance laws (including, but not limited to, California Government Code Section 7260 et seq.), except as otherwise specifically provided in this Sublease with respect to a Taking.

**21.5. Rent Control Laws Inapplicable**. Subtenant acknowledges and agrees that the rent for the Premises is controlled by a governmental agency and, therefore, neither the Premises nor this Sublease are subject to the provisions of any rent control or other similar ordinances, including, without limitation, the provisions of Chapter 37 of the San Francisco Administrative Code.

**21.6. MacBride Principles - Northern Ireland**. The City and County of San Francisco urges companies doing business in Northern Ireland to move toward resolving employment inequities and encourages them to abide by the MacBride Principles as expressed in San Francisco Administrative Code Section 12F.1, et seq. The City and County of San Francisco also urges San Francisco companies to do business with corporations that abide by the MacBride Principles. Subtenant acknowledges that it has read and understands the above statement of the City and County of San Francisco concerning doing business in Northern Ireland.



**21.7. Tropical Hardwood Ban.** The City and County of San Francisco urges companies not to import, purchase, obtain or use for any purpose, any tropical hardwood or tropical hardwood product.

**21.8. Conflicts of Interest.** Subtenant states that it is familiar with the provisions of Section 8.105 and 8.106 of the San Francisco Charter and certifies that it knows of no facts which would constitute a violation of such provisions. Subtenant further certifies that it has made a complete disclosure to the Sublandlord of all facts bearing on any possible interests, direct or indirect, which Subtenant believes any officer or employee of the Sublandlord presently has or will have in this Sublease or in the performance thereof or in any portion of the profits thereof. Willful failure by Subtenant to make such disclosure, if any, shall constitute grounds for the Sublandlord's termination and cancellation of this Sublease.

**21.9. Prevailing Wages for Construction Work.** Subtenant agrees that any person performing labor in the construction of the alterations required under Section 7.1 [Alterations] shall be paid not less than the highest prevailing rate of wages and that Subtenant shall include, in any contract for construction of such improvements, a requirement that all persons performing labor under such contract shall be paid not less than the highest prevailing rate of wages for the labor so performed. Subtenant further agrees that, as to the construction of such improvements under this Sublease, Subtenant shall comply with all the provisions of subsection (b) of San Francisco Charter Section A7.204 and Sections 6.33 through 6.45 of the San Francisco Administrative Code that relate to payment of prevailing wages. Subtenant shall require any contractor to provide, and shall deliver to Sublandlord every two weeks during any construction period, certified payroll reports with respect to all persons performing labor in the construction of any of the required alterations.

**21.10. Prohibition of Tobacco Advertising.** Subtenant acknowledges and agrees that no advertising of cigarettes or tobacco products is allowed on any real property owned by or under the control of the Authority or the City, including the Premises and the Property. This prohibition includes the placement of the name of a company producing selling or distributing cigarettes or tobacco products or the name of any cigarette or tobacco product in any promotion of any event or product. This prohibition does not apply to any advertisement sponsored by a state, local or nonprofit entity designed to communication the health hazards of cigarettes and tobacco products or to encourage people not to smoke or to stop smoking.

Sublandlord and Subtenant have executed this Sublease in triplicate as of the date first written above.

**SUBTENANT:**

**TREASURE ISLAND HOMELESS**

**DEVELOPMENT INITIATIVE,  
a nonprofit corporation,**

By: \_\_\_\_\_  
Its:

**SUBLANDLORD:**

**THE TREASURE ISLAND DEVELOPMENT  
AUTHORITY**

By: \_\_\_\_\_  
Its: Executive Director

Approved as to Form:

\_\_\_\_\_  
Deputy City Attorney

EXHIBIT A

MASTER LEASE



EXHIBIT B

MAP OF AREA



EXHIBIT C

SEISMIC REPORT





EXHIBIT D

DESCRIPTION OF SUPPORT SERVICES



EXHIBIT E

RULES AND REGULATIONS

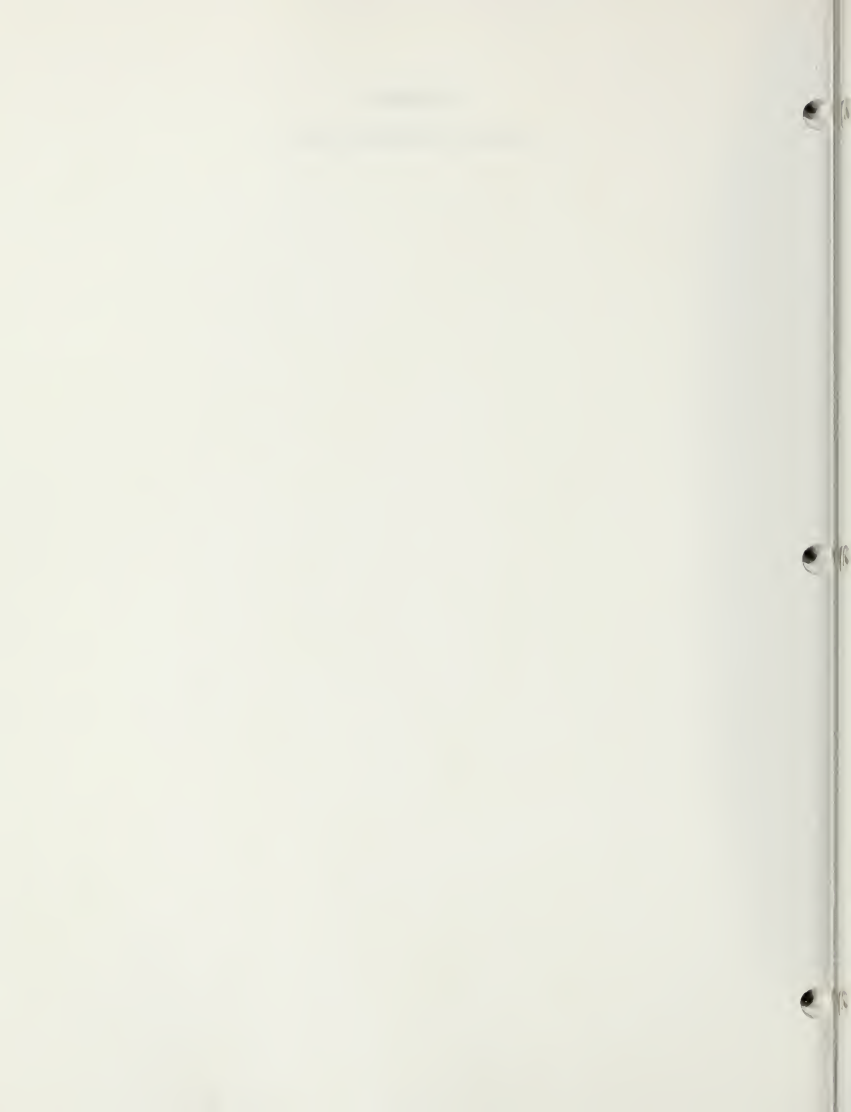
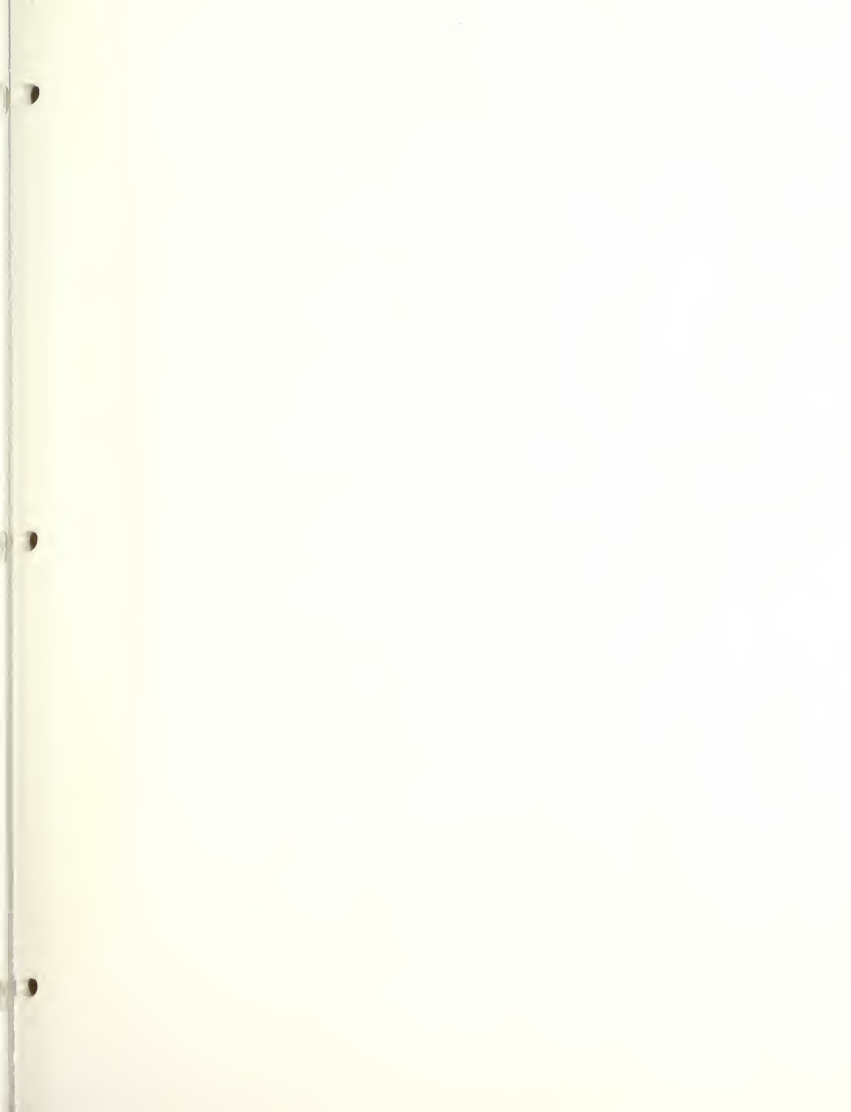


EXHIBIT F

UTILITIES









**AGENDA ITEM**  
**TREASURE ISLAND DEVELOPMENT AUTHORITY**  
**City and County of San Francisco**

Agenda Item No. 13

Meeting of March 14, 2001

**Subject:** Request for Approval of Contract with Toolworks, Inc. for janitorial and building maintenance services for the period March 2001 through February 2002 for an amount not to exceed \$125,000.

**Contact/Phone:** Annemarie Conroy, Executive Director  
Robert Mahoney, Deputy Executive Director  
274-0660

**SUMMARY OF PROPOSED ACTION**

Authorize execution of a contract with Toolworks, a member organization of the Treasure Island Homeless Development Initiative, for janitorial and building maintenance services for the period March 1, 2001 through February 28, 2002 for an amount not to exceed \$125,000

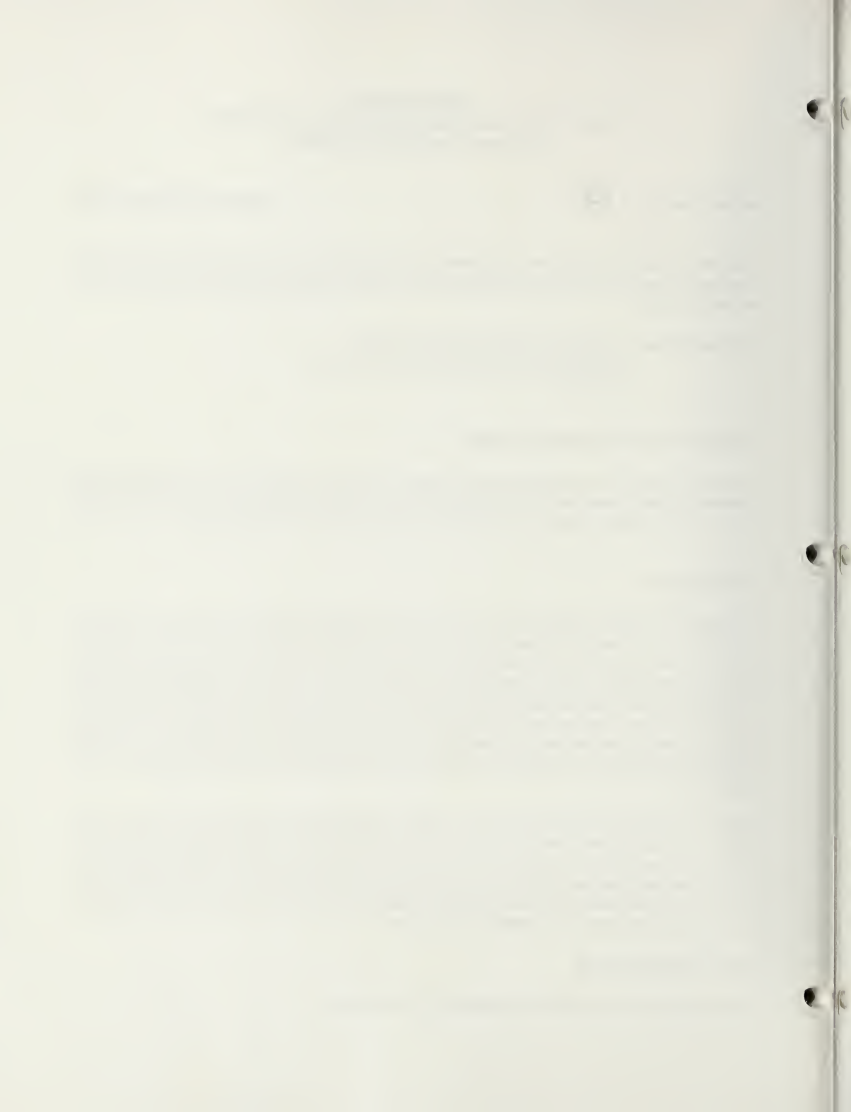
**DISCUSSION**

Toolworks, a member organization of the Treasure Island Homeless Development Initiative (TIHDI), is a non-profit agency organized to provide services that increase economic opportunities for people with disabilities. One of its programs is contractual janitorial services. Janitorial and other building maintenance services are identified in the draft Homeless Component of the Treasure Island Reuse Plan as one of the economic development opportunities available to assist homeless and other economically disadvantaged San Franciscans. The Board of Supervisors has authorized the Authority to engage in sole source negotiations with TIHDI member organizations for contracts for economic development opportunities identified in the Reuse Plan.

Janitorial services are required for the Treasure Island Project offices and the special event venues. Since the event venues often are booked for both Saturdays and Sundays, janitorial services are needed seven days a week. The proposed contract with Toolworks provides for 74 hours of janitorial services weekly for an amount not to exceed \$6,943 per month or \$83,316 per year. The contract also provides for \$41,684 in additional janitorial services, including (subject to negotiation) assistance with special event support.

**RECOMMENDATION**

Staff recommends approval of the contract with Toolworks.



**AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A CONTRACT WITH TOOLWORKS, INC., A MEMBER ORGANIZATION OF THE TREASURE ISLAND HOMELESS DEVELOPMENT INITIATIVE, AND A CALIFORNIA PUBLIC BENEFIT CORPORATION, FOR AN AMOUNT NOT TO EXCEED \$125,000 TO PROVIDE JANITORIAL AND OTHER BUILDING SERVICES FOR THE PERIOD MARCH 2001 THROUGH FEBRUARY 2002.**

WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America ("the Federal Government"); and,

WHEREAS, Treasure Island was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, In 1995, the General Services Administration and the Bureau of Land Management determined that Yerba Buena Island was surplus to the Federal Government's needs and could be transferred to the administrative jurisdiction of the Department of Defense under the Base Closure and Realignment Act of 1990 and disposed of together with Treasure Island; and,

WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (I) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the Base which are subject to Tidelands Trust, vested in the Authority the Authority to administer the public trust for commerce, navigation and fisheries as to such property; and

WHEREAS, The Board of Supervisors approved the designation of the Authority as a redevelopment agency for Treasure Island in 1997; and,

WHEREAS, the City and County of San Francisco negotiated a proposed Base Closure Homeless Assistance Agreement and Option to Lease Real Property with the Treasure Island Homeless Development Initiative, a California nonprofit corporation organized to utilize the resources of former naval base Treasure Island available to help fill gaps in the continuum of care for homeless persons and families, pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994; and,

WHEREAS, the Authority wishes to support the Treasure Island Homeless Development Initiative pursuant to the Base Closure Community Redevelopment and Homeless Assistance Act of 1994; and

WHEREAS, the Contractor represents and warrants that it is qualified to perform the janitorial and other building maintenance services required by the Authority as set forth under this Contract; and

WHEREAS, the Authority has negotiated with the Contractor to reach agreement on the scope of work, and budget for the services shown in Appendix A;

Now, therefore be it RESOLVED, That the Authority hereby authorizes the Executive Director of the Project to execute a contract with Toolworks, Inc., a California public benefit corporation, for an amount not to exceed \$125,000 to provide janitorial and other building maintenance services for former naval base Treasure Island.

## CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on March 14, 2001.

---

John Elberling, Secretary









City and County of San Francisco  
Treasure Island Development Authority  
Treasure Island Building One  
410 Palm Avenue  
San Francisco, California 94130

ORIGINAL

Agreement between the TREASURE ISLAND DEVELOPMENT AUTHORITY and  
TOOLWORKS, INC.

This Agreement is made this first day of March 2001, in the City and County of San Francisco, State of California, by and between Toolworks, Inc., a California nonprofit corporation, hereinafter referred to as "Contractor," and the Treasure Island Development Authority, a municipal corporation, hereinafter referred to as "Authority," acting by and through its Executive Director, hereinafter referred to as "Executive Director."

**Recitals**

WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America ("the Federal Government"); and,

WHEREAS, Treasure Island was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, In 1995, the General Services Administration and the Bureau of Land Management determined that Yerba Buena Island was surplus to the Federal Government's needs and could be transferred to the administrative jurisdiction of the Department of Defense under the Base Closure and Realignment Act of 1990 and disposed of together with Treasure Island; and,

WHEREAS, On May 2, 1997, the Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (I) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the Base which are subject to Tidelands Trust, vested in the Authority the Authority to administer the public trust for commerce, navigation and fisheries as to such property; and

WHEREAS, The Board of Supervisors approved the designation of the Authority as a redevelopment agency for Treasure Island in 1997; and,

WHEREAS, It is necessary to provide janitorial services to fulfill the requirements of the Authority's contract with the United States Navy for caretaker services on former naval base Treasure Island, and to promote public health and safety on Treasure Island and

WHEREAS, the Authority wishes to support the Homeless Assistance Component of the Treasure Island Reuse Plan; and

WHEREAS, the Contractor is a member of the Treasure Island Homeless Development Initiative; and

WHEREAS, the Contractor represents and warrants that it is qualified to perform the janitorial services required by the Authority as set forth in this Agreement; and

WHEREAS, the Authority has negotiated with the Contractor to reach agreement on the scope of work, and budget for janitorial services shown in Appendix A; and

WHEREAS, approval for said Agreement was obtained from the Board of Supervisors by Resolution No. 672-96 dated July 1, 1997;

Now, THEREFORE, the parties agree as follows:

**1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation**

This Agreement is subject to the budget and fiscal provisions of the Charter of the City and County of San Francisco ("City"). Charges will accrue only after prior written authorization certified by the City's Controller ("Controller"), and the amount of Authority's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to Authority at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

Authority and City have no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. Authority and City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.

**THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.**

## **2. Term of the Agreement**

Subject to Section 1, the term of this Agreement shall be from March 1, 2001 through February 28, 2002.

## **3. Effective Date of Agreement**

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

## **4. Services Contractor Agrees to Perform**

The Contractor agrees to perform the services provided for in Appendix A, "Description of Services," attached hereto and incorporated by reference as though fully set forth herein.

## **5. Compensation**

Compensation shall be made in monthly payments on or before the last day of each month for work, as set forth in Section 4 of this Agreement, that the Executive Director, in her sole discretion, concludes has been performed as of the last day of the immediately preceding month. In no event shall the amount of this Agreement exceed one hundred twenty-five thousand dollars (\$125,000). The breakdown of costs associated with this Agreement appears in Appendix B, "Calculation of Charges," attached hereto and incorporated by reference as though fully set forth herein.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until reports, services, or both, required under this Agreement are received from Contractor and approved by the Executive Director, in her sole discretion, as being in accordance with this Agreement. Authority may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall the Authority or City be liable for interest or late charges for any late payments.

## **6. Guaranteed Maximum Costs**

(a) The Authority's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

(b) Except as may be provided by laws governing emergency procedures, officers and employees of Authority and/or City are not authorized to request, and the Authority is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

(c) Officers and employees of the Authority and/or City are not authorized to offer or promise, nor are the Authority and/or City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

(d) The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

## **7. Payment; Invoice Format**

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Executive Director and must include the Contract Progress Payment Authorization number. All invoices must identify hours worked by each employee of the Contractor and each subcontractor by date and by task. Any reimbursements claimed for direct expenses must be accompanied by appropriate back-up documentation. Each invoice shall cover only a single calendar month. Any invoice submitted by Contractor that does not include all required documentation will be returned to Contractor unprocessed. All amounts paid by Authority to Contractor shall be subject to audit by Authority.

Payment shall be made by Authority to Contractor at the address specified in the section entitled "Notices to the Parties."

## **8. Submitting False Claims; Monetary Penalties**

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the Authority for three times the amount of damages which the Authority sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the Authority for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the Authority for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the Authority if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the Authority or City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the Authority or City; (c) conspires to defraud the Authority or City by getting a false claim allowed or paid by the Authority; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Authority or City; or (e) is a beneficiary of an inadvertent submission of a false claim to the Authority or City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the Authority or City within a reasonable time after discovery of the false claim.

## **9. Disallowance**

If Contractor claims or receives payment from Authority or City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to Authority upon Authority's request. At its option, Authority may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

## 10. Taxes

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of Authority or City property for private gain. If such a possessory interest is created, then the following shall apply:

- (1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;
- (2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the Authority to the Assessor of the City and County of San Francisco ("Assessor") the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.
- (3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time) Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the Assessor, the State Board of Equalization or other public agency as required by law.
- (4) Contractor further agrees to provide such other information as may be requested by the Authority to enable the Authority to comply with any reporting requirements for possessory interests that are imposed by applicable law.

## 11. Payment Does Not Imply Acceptance of Work

The granting of any payment by Authority or City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by Authority and in such case must be replaced by Contractor without delay.

## **12. Qualified Personnel**

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with Authority's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at Authority's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

## **13. Responsibility for Equipment**

Authority and City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by Authority or City.

## **14. Independent Contractor; Payment of Taxes and Other Expenses**

a. Independent Contractor: Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by Authority under this Agreement. Contractor is liable for the acts and omissions of itself, its employees and its agents. Nothing in this Agreement shall be construed as creating an employment or agency relationship between Authority or City and Contractor.

Any terms in this Agreement referring to direction from Authority shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained.

b. Payment of Taxes and Other Expenses: Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for Authority, upon notification of such fact by Authority, Contractor shall promptly remit such amount due or arrange with Authority to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of Authority or City. Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in Authority's financial liability so that Authority's total expenses under this



Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

## 15. Insurance

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- (1) Workers' Compensation, with Employers' Liability Limits not less than \$1,000,000 each accident; and
- (2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- (3) Business Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

b. Commercial General Liability and Business Automobile Liability Insurance policies must provide the following:

- (1) Name as Additional Insured the Treasure Island Development Authority, the City and County of San Francisco, and their Officers, Agents, and Employees.
- (2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall provide thirty (30) days' advance written notice to Authority of cancellation mailed to the following address:

Treasure Island Development Authority  
Treasure Island Building One  
410 Palm Avenue  
San Francisco CA 94130

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense

costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Authority receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the Authority may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor must furnish to Authority certificates of insurance, in form and with insurers satisfactory to Authority, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon Authority request.

h. Approval of the insurance by Authority shall not relieve or decrease the liability of Contractor hereunder.

#### 16. Indemnification

Contractor shall indemnify and save harmless Authority and City and their officers, agents and employees from, and, if requested, shall defend them against any and all loss, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, resulting directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, the use of Contractor's facilities or equipment provided by Authority or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on Authority, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of Authority and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee.

In addition to Contractor's obligation to indemnify Authority and City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend Authority and City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by Authority and continues at all times thereafter.

Contractor shall indemnify and hold Authority and City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by Authority, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.



## **17. Incidental and Consequential Damages**

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights which Authority may have under applicable law.

## **18. Liability of Authority and City**

AUTHORITY'S AND CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL AUTHORITY OR CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT

## **19. Left blank by agreement of the parties."**

## **20. Default; Remedies**

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

- (1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, or 49.
- (2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten (10) days after written notice thereof from Authority to Contractor.
- (3) Contractor (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (E) takes action for the purpose of any of the foregoing.
- (4) A court or government authority enters an order (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (B) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any

jurisdiction or (C) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, Authority shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, Authority shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to Authority on demand all costs and expenses incurred by Authority in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. Authority shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between Authority and Contractor all damages, losses, costs or expenses incurred by Authority as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

#### **21. Termination for Convenience**

a. Authority shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. Authority shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by Authority and to minimize the liability of Contractor and Authority to third parties as a result of termination. All such actions shall be subject to the prior approval of Authority. Such actions shall include, without limitation:

- (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by Authority.
- (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (3) Terminating all existing orders and subcontracts.
- (4) At Authority's direction, assigning to Authority any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, Authority shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (5) Subject to Authority's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.

- (6) Completing performance of any services or work which Authority designates to be completed prior to the date of termination specified by Authority.
- (7) Taking such action as may be necessary, or as the Authority may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which Authority has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to Authority an invoice, which shall set forth each of the following as a separate line item:

- (1) The reasonable cost to Contractor, without profit, for all services and other work Authority directed Contractor to perform prior to the specified termination date, for which services or work Authority has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of ten percent (10%) of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.
- (2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of Authority, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5 percent (5%) of such cost.
- (3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the Authority or otherwise disposed of as directed by the Authority.
- (4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to Authority, and any other appropriate credits to City against the cost of the services or other work.

d. In no event shall Authority be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by Authority, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, Authority may deduct: (1) all payments previously made by Authority for work or other services covered by Contractor's final invoice; (2) any claim which Authority may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the

Authority, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and Authority's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. Authority's payment obligation under this Section shall survive termination of this Agreement.

## **22. Rights and Duties Upon Termination or Expiration**

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8, 9, 10, 11, 13, 14, 16, 17, 18, 24, 25, 26, 27, 28, 30, 43, 45 through 48, and 50.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to Authority, and deliver in the manner, at the times, and to the extent, if any, directed by Authority, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to Authority. This subsection shall survive termination of this Agreement.

## **23. Conflict of Interest**

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of §15.103 and Appendix C 8.105 of City's Charter and §87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions.

## **24. Proprietary or Confidential Information of Authority and City**

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by Authority or City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Authority or City. Contractor agrees that all information disclosed by Authority or City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

## **25. Notices to the Parties**

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

**To Authority and City:**

Annemarie Conroy, Executive Director  
Treasure Island Development Authority  
Treasure Island Building One  
410 Palm Avenue  
San Francisco, CA 94130  
Email= Annemarie Conroy @ci.sf.ca.is.com  
Fax = 415/274-0299

**To Contractor:**

Donna Feingold, Executive Director  
Toolworks  
1119 Market Street Suite 300  
San Francisco CA 94103  
Fax 415/255-0632

Any notice of default must be sent by registered mail.

**26. Ownership of Results**

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to Authority. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

**27. Works for Hire**

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the Authority. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyrights to such works to the Authority, and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the Authority, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

**28. Audit and Inspection of Records**

Contractor agrees to maintain and make available to the Authority, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit Authority to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible

location and condition for a period of not less than three years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon Authority by this Section.

## **29. Subcontracting**

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by Authority in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

## **30. Assignment**

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by Authority by written instrument executed and approved in the same manner as this Agreement.

## **31. Reserved**

## **32. Earned Income Credit (EIC) Forms**

Administrative Code section 120 requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty (30) days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 120 of the San Francisco Administrative Code.



### **33. Minority/Women/Local Business Utilization; Liquidated Damages**

#### **a. Compliance**

Contractor understands and agrees to comply fully with all provisions of Chapter 12D.A ("Minority/Women/ Local Business Utilization Ordinance--IV") of the San Francisco Administrative Code and agrees to include this paragraph in all subcontracts made in fulfillment of the Contractor's obligations under this Agreement. Said provisions are incorporated herein by reference and made a part of this Agreement as though fully set forth. Contractor's willful failure to comply with Chapter 12D.A is a material breach of contract.

#### **b. Enforcement**

If Contractor willfully fails to comply with any of the provisions of Chapter 12D.A, the rules and regulations implementing Chapter 12D.A, or the provisions of this Agreement pertaining to MBE or WBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or ten percent (10%) of the total amount of this Agreement, or one thousand dollars (\$1,000), whichever is greatest. The Director of the City's Human Rights Commission (HRC) may also impose other sanctions against Contractor authorized in Chapter 12D.A, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's MBE or WBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to §12D.A.16C.

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with Chapter 12D.A for a period of three years following termination of this contract.

### **34. Nondiscrimination; Penalties**

#### **a. Contractor Shall Not Discriminate**

In the performance of this Agreement, Contractor agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any Authority or City employee working with, or applicant for employment with Contractor, in any of Contractor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Contractor.

#### **b. Subcontracts**

Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the S.F. Administrative Code (copies of which are available from Toolworks

Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

**c. Nondiscrimination in Benefits**

Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the Authority elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the S.F. Administrative Code.

**d. Condition to Contract**

As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

**e. Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapters 12B and 12C of the S.F. Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §12B.2(h) of the S.F. Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

**35. MacBride Principles—Northern Ireland**

Pursuant to S.F. Administrative Code §12.F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

**36. Tropical Hardwood and Virgin Redwood Ban**

Pursuant to S.F. Administrative Code §12I.5(b), the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.



### **37. Drug-Free Workplace Policy**

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.

### **38. Resource Conservation; Liquidated Damages**

Chapter 21A of the S.F. Administrative Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 21A will be deemed a material breach of contract.

In the event Contractor fails to comply in good faith with any of the provisions of Chapter 21A, Contractor will be liable for liquidated damages in an amount equal to Contractor's net profit under this Agreement, or five percent (5%) of the total contract amount, whichever is greater. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to City upon demand and may be offset against any monies due to Contractor from any contract with City.

### **39. Compliance with Americans with Disabilities Act**

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

### **40. Sunshine Ordinance**

In accordance with S.F. Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

### **41. Public Access to Meetings and Records**

If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code.

Contractor further agrees to make good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

#### 42. Requiring Minimum Compensation for Employees

Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.ci.sf.ca.us/MCO](http://www.ci.sf.ca.us/MCO). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

(a) For each hour worked by a Covered Employee during a Pay Period on work funded under the Authority contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, the Contractor shall pay \$9.00 an hour through December 31, 2001. On January 1, 2002, Contractor shall increase the hourly gross compensation to \$10.00 an hour; provided, however, that if Contractor is a Nonprofit Corporation or a public entity, it shall be required to pay the increased amount only if the City makes the finding required by Section 12P.3(a)(ii) of the San Francisco Administrative Code. If Contractor is required to increase the gross hourly compensation to \$10.00 an hour, it shall provide the 2.5% annual increase required by the MCO for each of the next three years.

(b) Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the Authority with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

(c) Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting through the Authority, shall determine whether such a breach has occurred.

(d) If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City, acting through the Authority, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

(1) The right to charge Contractor an amount equal to the difference between the Minimum

Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;

- (2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;
- (3) The right to terminate this Agreement in whole or in part;
- (4) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
- (5) The right to bar Contractor from entering into future contracts with the City for three (3) years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

(e) Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

(f) Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the CITY, which communications are marked to indicate that they are to be distributed to Covered Employees.

(g) Contractor shall provide reports to the Authority in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.

(h) The Contractor shall provide the Authority with access to pertinent records after receiving a written request from the Authority to do so and being provided at least five (5) business days to respond.

(i) The Authority may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the Authority from investigating any report of an alleged violation of the MCO.

(j) Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the

same as those set forth in this Section. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, Authority may pursue any of the remedies set forth in this Section against Contractor.

(k) Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

(l) If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

#### 43. Non-Waiver of Rights

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

#### 44. Modification of Agreement

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Authority to submit to the Director of HRC any amendment,

modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than twenty percent (20%).

#### **45. Administrative Remedy for Agreement Interpretation**

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the City's Purchasing who shall decide the true meaning and intent of the Agreement.

#### **46. Agreement Made in California; Venue**

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

#### **47. Construction**

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

#### **48. Entire Agreement**

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 44.

#### **49. Compliance with Laws**

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

#### **50. Severability**

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

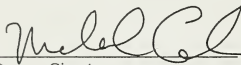
#### AUTHORITY

Recommended by:

\_\_\_\_\_  
Annemarie Conroy, Executive Director  
Treasure Island Development Authority

Approved as to Form:

Louise H. Renne  
City Attorney

By   
Deputy City Attorney

Approved:

\_\_\_\_\_  
Director of Purchasing

#### CONTRACTOR

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

  
Donna Feingold, Executive Director  
Toolworks  
1119 Market Street Suite 300  
San Francisco CA 94103  
Fed Tax ID: 94-2493384

#### APPENDICES

- A: Services to be Provided by Contractor
- B: Calculation of Charges



## **APPENDIX A SCOPE OF SERVICES**

### **SERVICES TO BE PROVIDED BY CONTRACTOR**

Toolworks ("Contractor") shall provide all labor, materials, and equipment necessary to perform janitorial services to buildings on Treasure Island and Yerba Buena Islands as described below. In performing the services provided for in this Appendix, Contractor's liaison with the Treasure Island Development Authority shall be Robert Mahoney, Treasure Island Facilities Manager.

For the following Treasure and Yerba Buena Island facilities, Building One, 410 Palm Avenue, Casa de la Vista, Chapel, Fogwatch, Nimitz Conference Center, and the Nimitz House, Contractor shall:

- Furnish all labor and materials for scheduled janitorial services
- Provide all necessary dispensers for soap, towels, toilet paper, seat covers and assure dispenser uniformity among all venues
- Stock all venues with cleaning supplies and appliances, including vacuum cleaners, mops, brooms, brushes
- Provide transportation of all staff among venues

#### **Services to be performed:**

- Pick-up and removal all trash
- Removal all leftover decorations
- Vacuum all rugs
- Sweep all floors
- Mop all floors
- Dry-mop hardwood floors
- Spot clean all rugs and floors
- Dust and clean all furniture, ledges, corners, windowsills, countertops, and all dirt & dust gathering surfaces
- Dust around door and window ledges
- Dust cobwebs
- Clean all accessible windows inside and out
- Clean all mirrors and glass doors
- Clean all bathrooms, including toilets, urinals, sinks, countertops, windows, ledges, floors, stalls
- Clean all kitchens, including floors, appliances, mirrors, windows, and ledges
- Clean all appliances, inside and out, including ovens, refrigerators, freezers, grills and sinks
- Clean all bar areas including floors, appliances, under any mats, sinks
- Clean all fireplace covers and ledges
- Clean all rooms, including storage rooms, of all facilities
- Wipe off and clean all tabletops, table legs and chairs

- In Chapel, clean pews, , dusts & polish podiums and pulpit and shelving area behind altar
- For all facilities clean in and around all doorways (inside and outside), sweep and remove trash for all entries and walkways
- In Casa, clean and sweep patio, empty trash cans and ashtrays, check landscaping for trash and remove
- Refill and replace bathroom and kitchen supplies including hand soap, hand towels, toilet paper, seat covers – all containers must be full at all times
- Keep bathroom and kitchen supply cabinets fully stocked

For Building One:

- Monthly: buff resilient floors
- Monthly polish brass railings and other brass fixtures
- Yearly: refinish all hard floors

For any questions, to report damages, or problems, contact the Mayor's Treasure Island Project Office:

Lori Mazzola, Special Events Coordinator, tel: 274-0312  
 Bob Mahoney, Deputy Executive Director, tel:274-0660



## **ADDENDUM 1 TO APPENDIX A**

### **1. WORKFORCE HIRING GOALS**

In performing its rights and responsibilities under this Agreement, Contractor shall comply with the following workforce hiring goals for qualified homeless or otherwise economically disadvantaged persons and San Francisco residents.

**1.1 Contractor's Workforce Hiring Goals.** Contractor shall use Good faith Efforts to meet the work force hiring goals described herein (the "Workforce Goals"). For purposes of this Section 1, Contractor's Good Faith Efforts shall include, but not be limited to, the following:

(a) Submitting detailed written plans describing how Contractor intends to meet the Workforce Goals (a "Hiring Plan").

(b) Listing jobs available on the Premises with the TIHDI Job Broker at least two weeks prior to advertising for applicants elsewhere;

(c) Considering for appropriate job openings all candidates who are qualified, screened and referred to it by the TIHDI Job Broker;

(d) Establishing with TIHDI mutually acceptable means of communicating about job openings and provide information about jobs and about outcomes of referrals within a reasonable time upon request by the TIHDI Job Broker;

(e) Consulting with the TIHDI Job Broker on an ongoing basis about how to meet Contractor's Workforce Goals; and

(f) Meeting and conferring with the TIHDI Job Broker to discuss and attempt to resolve any problems with Contractor meeting its Workforce Goals.

**1.2 Burden of Proof.** If the Workforce Goals are not met, Contractor shall have the burden of establishing in any Enforcement Procedure described in Section 1.9 below that it made Good Faith Efforts and that the candidates who were selected were better qualified for work than the homeless or economically disadvantages persons who applied or were referred by the TIHDI Job Broker.

**1.3 Construction Workforce.** Without obligation (other than as expressly set forth herein), Contractor shall also be required to give consideration for hiring on all construction projects on the Premises to qualified homeless or otherwise economically disadvantaged persons, and to qualified residents of San Francisco whose annual income, at the time of hire, is at or below fifty percent (50%) of median income for the City as determined by HUD.

**1.4 Subcontracting.** Contractor will consider subcontracting certain tasks to be performed by Contractor under this Agreement to TIHDI member organizations, particularly for grounds keeping, janitorial, recycling and deconstruction activities. Subcontracts with TIHDI organizations will be included for purposes of determining Contractor's Good Faith Efforts to meet the Work Force Goals.

## 1.5

### Hiring Plan.

(a) Contractor shall submit its Hiring Plan to the Authority within sixty (60) days of the Commencement Date. Contractor's Hiring Plan shall include a detailed description of how Contractor intends to meet its Workforce Goals, which description should include community outreach and recruiting efforts, hiring procedures (e.g., phased hiring), a projected schedule for meeting the Workforce Goals, and alternative courses of action if it appears that the Workforce Goals will not be met.

(b) During the first 30 days after the Hiring Plan is submitted, the Authority and Contractor shall negotiate in good faith solutions to any deficiencies in the Hiring Plan as reasonably determined by the Authority. At the expiration of such 30-day period, the Authority shall advise Contractor, through a written "Notice of Noncompliance," of any alleged deficiency in the Hiring Plan remaining at the close of such negotiations. The Notice of Noncompliance shall state the specific basis for the alleged deficiency(ies) and the Authority's suggested cure. Contractor shall advise the Authority within 10 days of its receipt of the Notice of Noncompliance whether Contractor accepts the suggested cure. If the Contractor rejects the suggested cure, either party may proceed immediately to the Enforcement Procedure pursuant to Section 1.9 below by filing a Request for Enforcement ("Request") on the Hiring Plan. The Request shall specify the issues presented and the relief requested.

## 1.6

### Reports.

Contractor shall prepare reports regarding the composition of Contractor's work force reasonably satisfactory to the Authority.

## 1.7

Matters Subject to Enforcement Procedure. In addition to the initial preparation of the Hiring Plan, all matters related to implementing the Hiring Plan and the Workforce Goals are subject to the Enforcement Procedure described in Section 1.9 below.

## 1.8

Implementation of Enforcement Procedure. The Enforcement Procedure, as provided for in Section 1.9 below, shall be the exclusive procedure for resolving any dispute concerning the interpretation or implementation of the Hiring Plan or any alleged deficiency in Contractor's Good Faith Efforts to achieve the Workforce Goals. The Enforcement Procedure shall be implemented by the Human Rights Commission of the City of County of San Francisco (the "Commission"), which shall have the powers described below unless otherwise provided by law.

(a) All subcontracts related to the Agreement ("Subcontracts") shall incorporate the provisions of this Section 1 and the Authority shall have the right to enforce said obligations, requirements and agreements against the Contractor or its subcontractors. Contractor shall require, by contract, that each subcontractor participates in Enforcement Procedure proceedings in which it may be identified in a Request, and that each subcontractor shall be bound by the outcome of such Enforcement Procedure according to the decision of the Commission.

## 1.9 Enforcement Procedure.

(a) If the Authority reasonably determines that Contractor has failed to use Good Faith Efforts to meet the Workforce Goals, or for any other matter subject to this Enforcement Procedure the Authority shall send a written Notice of Noncompliance to

Contractor describing the basis for its determination and suggesting a means to cure any deficiencies. If Contractor does not, in the reasonable discretion of the Authority, cure the deficiency within ten (10) days, the matter shall be submitted to the following Enforcement Procedure.

(i) Prior to the filing and service of a Request, the parties to any dispute shall meet and confer in an attempt to resolve the dispute.

(ii) The Authority, Contractor or any subcontractor may commence resolution of any dispute covered by the Enforcement Procedure by filing a Request with the Commission. Where the Authority is not the complaining party, the Request shall be served on the Authority. Where the Authority is the complaining party, the Request shall be served on the Contractor at the Notice Address listed in the Agreement, and the non-compliant subcontractor, if any, if such service can be achieved with reasonable effort. The Request shall be filed and served either by hand delivery or by registered or certified mail. The Request shall identify the entities involved in the dispute and state the exact nature of the dispute and the relief sought. If the complaining party seeks a temporary restraining order and/or a preliminary injunction, the Request shall so state in the caption of the Request.

(iii) Service on the Contractor of the Request or any notice provided for by this Section 1 shall constitute service of the Request or notice on all subcontractors who are identified as being in alleged noncompliance in the Request. The Contractor shall promptly serve the Request or notice, by hand delivery or registered or certified mail, on all such subcontractors.

(iv) The TIHDI Job Broker shall have the right to present testimony or documentary evidence at Enforcement Procedure proceedings.

(v) After the filing and the service of a Request, the parties shall negotiate in good faith for a period of 10 business days in an attempt to resolve the dispute; provided that the complaining party may proceed immediately to the Enforcement Procedure, without engaging in such a conference or negotiations, if the facts could reasonably be construed to support the issuance of a temporary restraining order or a preliminary injunction ("Temporary Relief"). The Commission shall determine whether the facts reasonably supported the issuance of Temporary Relief.

(vi) If the dispute is not settled within 10 business days, a hearing shall be held within 90 days of the date of the filing of the Request, unless otherwise agreed by the parties or ordered by the Commission upon a showing of good cause; provided, that if the complaining party seeks a temporary restraining order, the hearing on the motion for a temporary restraining order shall be heard not later than two (2) business days after the filing of the Request, and provided further, if a party seeks a preliminary injunction, such motion shall be heard on 15 days' notice. The Commission shall set the date, time and place for the Enforcement Procedure hearing(s) within the proscribed time periods by giving notice by hand delivery to the Authority and the Contractor; except, where a temporary restraining order is sought, the Commission may give notice of the hearing date, time and place to the Authority, Contractor and any affected subcontractor by telephone.

(vii) In the Enforcement Procedure proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05.

(b) Commission's Decision. The Commission shall render a decision within 20 days of the date that the hearing on a Request is completed; provided that where a temporary restraining order is sought, the Commission shall render a decision not later than 24 hours after the hearing on the motion. The Commission shall send the decision by certified or registered mail to the Authority, the Contractor and the subcontractor, if any.

(i) The Commission may enter a default award against any party who fails to appear at the hearing; provided said party received actual notice of the hearing. In a proceeding seeking a default award against a party other than the Contractor, the Contractor shall provide proof of service on the party as required by this Article. If the Contractor fails to provide proof of service, the Contractor shall pay \$2,500 as liquidated damages to the Authority, provided that no such damages shall be assessed if the Contractor demonstrates that it made good faith efforts to serve the party. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

(ii) Except as otherwise provided in this Section 1, the Commission shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the Agreement, or to negotiate new agreements or provisions between the parties.

(iii) The inquiry of the Commission shall be restricted to the particular controversy that gave rise to the request for the Enforcement Procedure. A decision of the Commission issued hereunder shall be final and binding upon the Authority, Contractor, and subcontractors, if any, sent by mail to the Authority, the Contractor and the subcontractor, if any. The losing party shall pay the Commission's fees and related costs of the Enforcement Procedure. If a subcontractor is the losing party and fails to pay said fees within 30 days of the decision, the Contractor shall pay the fees. Each party shall pay its own attorneys' fees provided that fees may be awarded to the prevailing party if the Commission finds that the Request was frivolous or that the Enforcement Procedure action was otherwise instituted or litigated in bad faith. Judgment upon the Commission's decision may be entered in any court of competent jurisdiction.

(c) Remedies and Sanctions. Except as may otherwise be expressly provided herein, the Commission may impose only the remedies and sanctions set forth below and only against the non-compliant party(ies):

(i) Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the Contractor's failure to make Good Faith Efforts, and/or to require Contractor and/or its subcontractors to make such Good Faith Efforts, including, but not limited to, orders enjoining the Contractor from recruiting, screening or hiring (through new hires, transfers or otherwise) any person for employment at the Premises pending resolution of the alleged deficiency(ies) in the Hiring Plan or Contractor's implementation of the Workforce Goals.

(ii) Require the Contractor or Subcontractors to refrain from entering into new contracts related to work related to the Agreement, or from granting extensions or other modifications to existing contracts related to the Agreement, other than those minor modifications or extensions necessary to enable completion of the work covered by the existing contract, with any non-compliant subcontractor until such subcontractor provides assurances satisfactory to the Authority and the Contractor of future Good Faith Efforts to comply with the Workforce Goals.

(iii) Direct the Contractor or subcontractor to cancel, terminate, suspend or cause to be canceled, terminated or suspended, any contract or lease or portion(s) thereof for failure of the subcontractor to make Good Faith Efforts to comply with the Workforce Goals, provided, however that Subcontracts may be continued upon the condition that a program for future compliance is approved by the Authority.

(iv) If the Contractor or subcontractor is found to be in willful breach of its obligations to make Good Faith Efforts to achieve the Workforce Goals, impose financial penalties not to exceed \$50,000 or 10 percent of the total monetary consideration contemplated by the Agreement, whichever is less, for each such breach on the party responsible for the willful breach; provided, however, no penalty shall be imposed pursuant to this paragraph for the first willful breach unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. The Contractor or subcontractor may impose penalties for subsequent willful breaches whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

(v) Direct that the Contractor or subcontractor produce and provide to the Authority any records, data or reports that are necessary to determine if a violation has occurred and/or to monitor the performance of the Contractor or Subcontractor.

(vi) Issue such other relief deemed necessary to ensure that the Hiring Plan is written and implemented, and that Contractor makes Good Faith Efforts to meet its Workforce Goals, including requiring the inclusion or exclusion of specific terms or provisions in the Hiring Plan based on a determination that the term(s) added or removed further the requirements and objectives of this Section 1.

(d) Delays due to enforcement. If Contractor does not timely perform its obligations under the Agreement with the Authority because of a Commission's order against a party other than the Contractor, such order shall be deemed an event of Force Majeure, and the time for any performance by the Contractor shall be extended as provided therein; provided, however, that Contractor shall make good faith efforts to minimize any delays.

(e) Exculpatory clause. The Contractor and its subcontractors hereby forever waive and release any and all claims against the Authority for Losses arising under or related to this Section 1.

(f) California law applies. California law, including the California Arbitration Act, Code of Civil Procedure §§1280 through 1294.2, shall govern all the Enforcement Procedure proceedings.

(g) Designation of agent for service. Not later than five (5) days after the execution of this Agreement, the Contractor shall designate a person or business, residing or located in the City and County of San Francisco, as its agent for service of a Request and all notices provided for herein. If the Contractor has an office located in San Francisco, it may designate itself as agent for service. The designation shall be served on

1.10. Relationship to Other Employment Agreements. Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce-training agreements or interfere with consent decrees, collective bargaining agreements or existing employment contracts. In the case of collective bargaining agreements, Contractor will take primary responsibility for integrating the requirements of Contractor's Workforce Goals with any such collective bargaining agreements. As necessary, Contractor will attempt to negotiate equivalent first source hiring obligations with relevant unions.

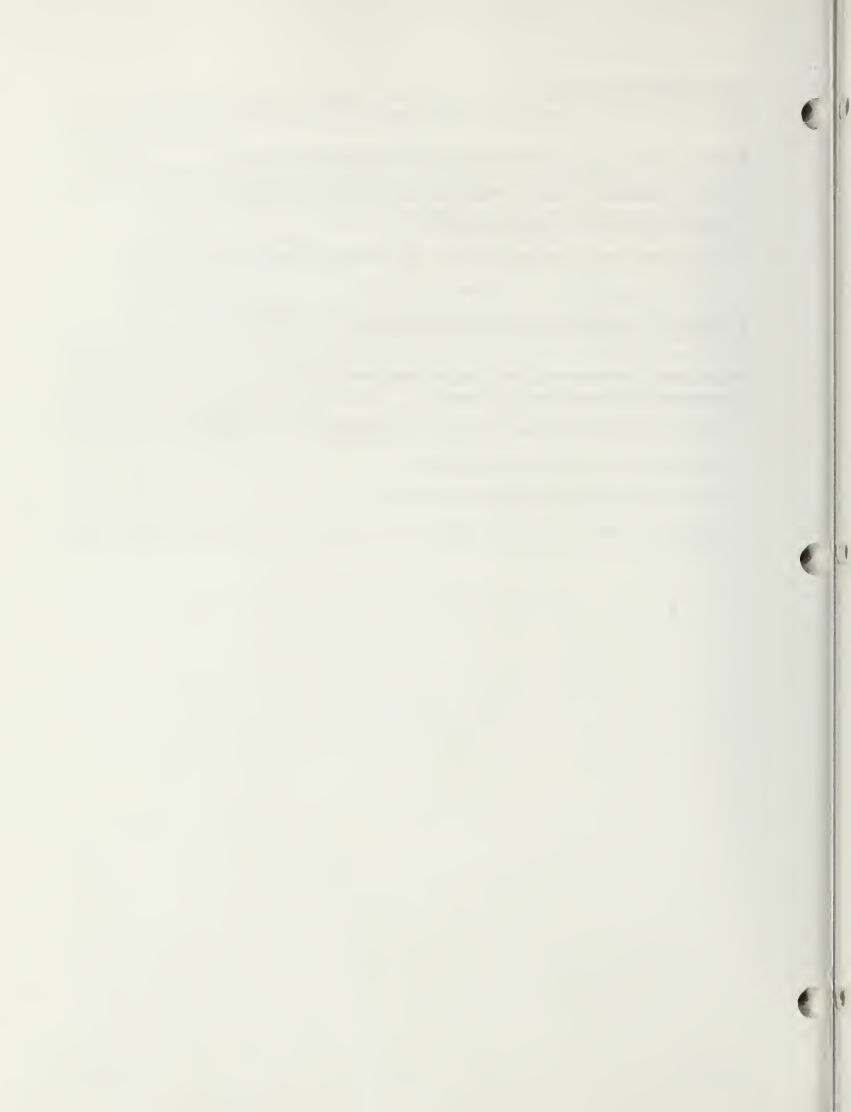
## **APPENDIX B BUDGET**

**For an amount not to exceed \$6,943 month, or \$83,316 per year provide:**

- 74 hours of janitorial services weekly, including weekends and holidays
- cleaning equipment, materials and supplies
- soap, toilet paper, hand towels, seat covers for all restrooms and kitchens in all venues
- Uniform soap and paper goods dispensers for all restrooms and kitchens in all venues
- transport of equipment and personnel among venues

**For an amount not to exceed \$41,684 per year at the specific request of Special Events Coordinator, or Deputy Executive Director:**

- Carpet cleaning @ \$40.00 per 500 square feet (500 sf minimum service area)
- Additional window cleaning @ \$25 per hour
- Additional janitorial services @ \$25.00 per hour
- Special event services including opening and closing event venue and monitoring event activities









**AGENDA ITEM**  
**Treasure Island Development Authority**  
**City and County of San Francisco**

**Subject:** Resolution Approving and Authorizing the  
Executive Director to Enter into a Second  
Amendment to the John Stewart Sublease  
To Add Licensed Local Hospital Personnel  
To the List of Persons Eligible for a Housing Preference

**Agenda Item No. 14**  
**Meeting of March 14, 2001**

**Contact/Phone:** Annemarie Conroy, Executive Director  
Stephen Proud, Director of Development  
274-0660

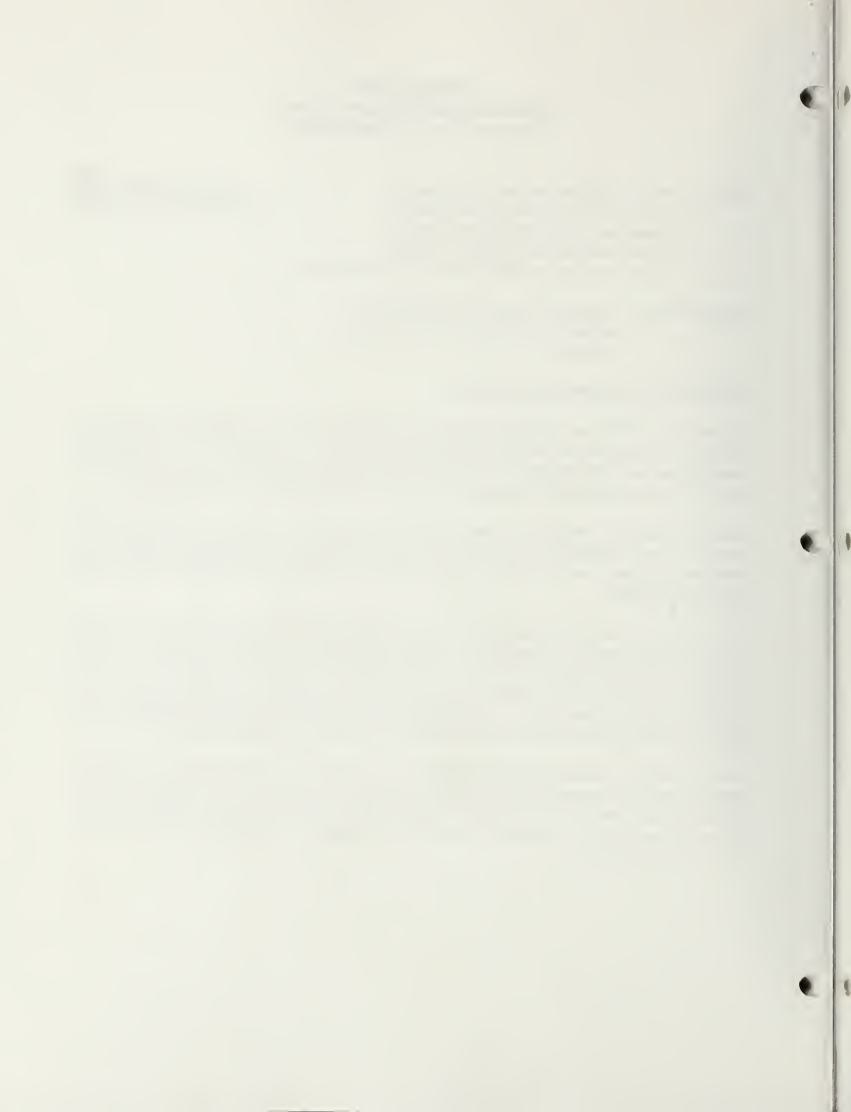
**SUMMARY OF PROPOSED ACTION:**

On March 17, 1999, the John Stewart Company ("JSCO") and the Authority entered into a Sublease, Development, Marketing and Property Management Agreement for the development, marketing and property management of up to 766 housing units on the Base, as amended by that certain First Amendment to Sublease dated August 15, 2000 (together, the "Sublease").

Under the Sublease, among other things, the JSCO is required to grant a 30-day right of first refusal leasing preference for up to 35% of JSCO's rentable units (the "Preference"), first to City personnel providing essential services to the Base, and then to San Francisco public safety employees generally.

On February 23, 2001, the Authority received a request from the Hospital Council of Northern and Central California to expand the preference category for essential personnel to include "certified or licensed hospital personnel." This request was made to help address the critical shortage of local licensed hospital medical personnel available to work in San Francisco ("Qualified Medical Personnel"). In addition, on February 26, 2001, District 6 Supervisor Chris Daley sent a letter to the Authority also requesting the essential personnel category be expanded.

Based on initial conversations with the JSCO, they are willing to amend the Sublease to add such Qualified Medical Personnel to the categories of persons who qualify for a Preference. Staff is presenting this resolution authorizing a second amendment to the Sublease adding Qualified Medical Personnel to the categories of persons who qualify for a Preference to the Authority Board for consideration.

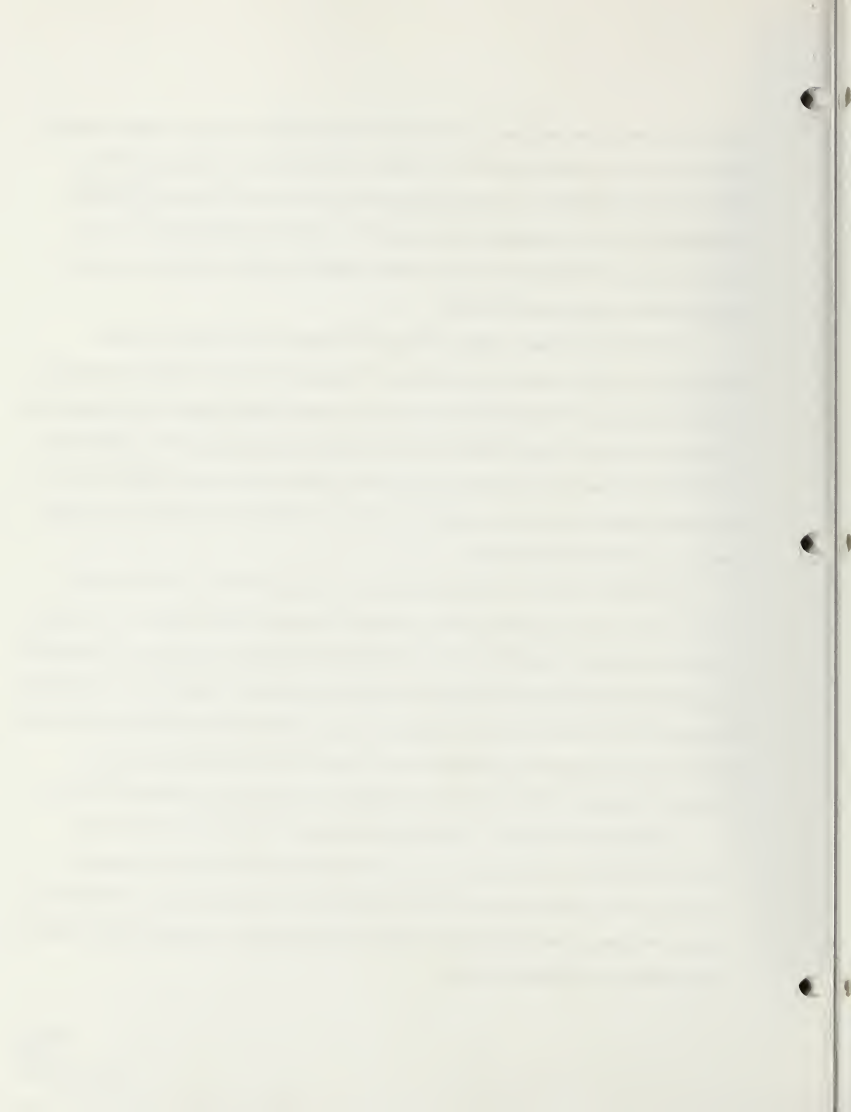


[Sublease Amendment with the John Stewart Company related to Treasure Island Housing]  
APPROVING AND AUTHORIZING THE EXECUTIVE DIRECTOR TO ENTER INTO A  
SECOND AMENDMENT TO THE HOUSING SUBLEASE WITH THE JOHN STEWART  
COMPANY TO ADD LICENSED LOCAL HOSPITAL MEDICAL PERSONNEL TO THE  
CATEGORIES OF PERSONS ELIGIBLE FOR A RIGHT OF FIRST REFUSAL LEASING  
PREFERENCE FOR SUCH HOUSING.

WHEREAS, On May 2, 1997, the Board of Supervisors (the "Board") passed  
Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a  
nonprofit public benefit corporation known as the Treasure Island Development Authority (the  
"Authority") to act as a single entity focused on the planning, redevelopment, reconstruction,  
rehabilitation, reuse and conversion of former Naval Station Treasure Island (the "Base") for  
the public interest, convenience, welfare and common benefit of the inhabitants of the City  
and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended  
Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter  
1333 of the Statutes of 1968 (the "Act"), the California legislature (i) designated the Authority  
as a redevelopment agency under California redevelopment law with authority over the Base  
upon approval of the City's Board of Supervisors, and, (ii) with respect to those portions of the  
Base which are subject to the Tidelands Trust, vested in the Authority the authority to  
administer the public trust for commerce, navigation and fisheries as to such property; and,

WHEREAS, On March 17, 1999, the John Stewart Company ("JSCO") and the  
Authority entered into a Sublease, Development, Marketing and Property Management  
Agreement for the development, marketing and property management of up to 766 housing  
units on the Base, as amended by that certain First Amendment to Sublease dated August 15,  
2000 (together, the "Sublease"); and,



WHEREAS, Under the Sublease, among other things, the JSCO is required to grant a 30-day right of first refusal leasing preference for up to 35% of JSCO's rentable units (the "Preference"), first to City personnel providing essential services to the Base, and then to San Francisco public safety employees generally; and

WHEREAS, To help address the critical shortage of housing for local licensed hospital medical personnel available to work in San Francisco ("Qualified Medical Personnel"), the JSCO is willing to amend the Sublease to add such Qualified Medical Personnel to the categories of persons who qualify for a Preference as to such units; Now therefore, be it,

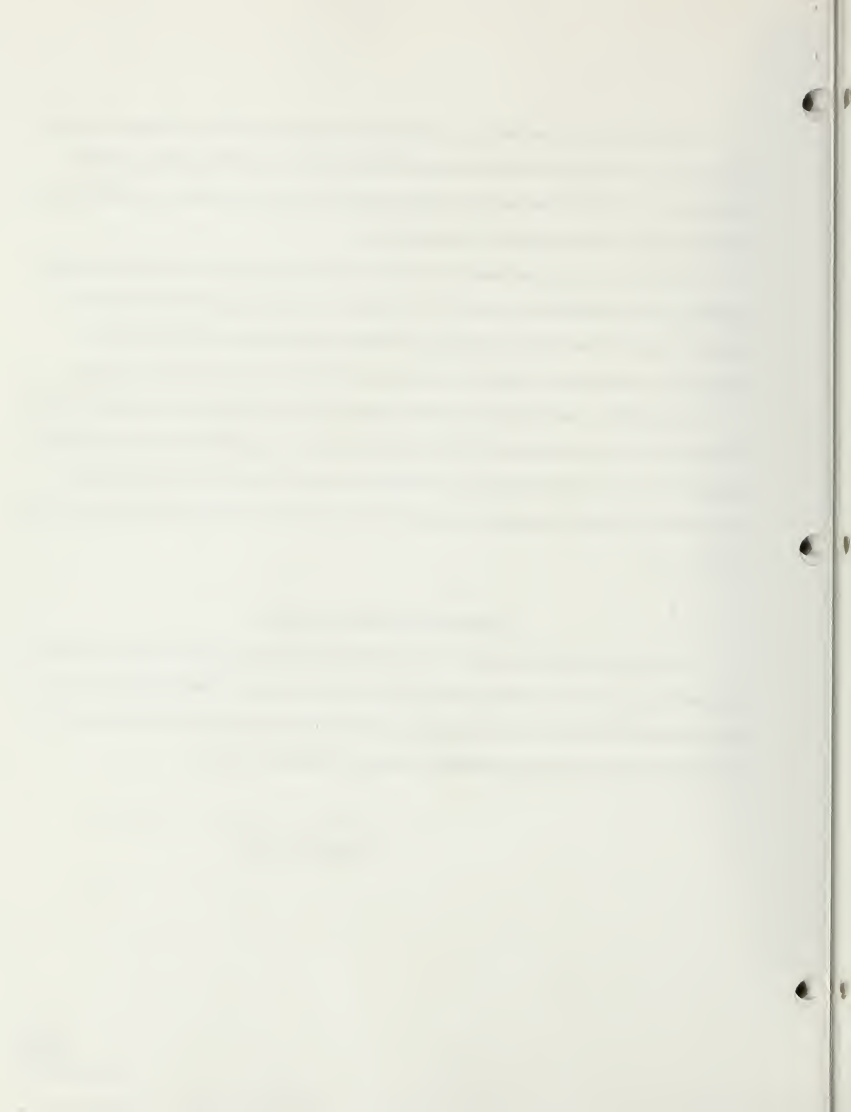
RESOLVED, That the Authority hereby approves and authorizes the Executive Director to enter into a second amendment to the Sublease adding Qualified Medical Personnel to the categories of persons who qualify for a Preference, on such terms as are necessary and advisable to effectuate the purpose and intent of this resolution, and in a form approved by the City Attorney.

#### **CERTIFICATE OF SECRETARY**

**I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on March 14, 2001.**

---

**John Elberling**









OFFICE OF THE MAYOR  
SAN FRANCISCO



WILLIE LEWIS BROWN, JR.

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3/29/01  
Specimen

TREASURE ISLAND PROJECT  
410 AVENUE OF THE PALMS  
BUILDING 1, 2ND FLOOR  
TREASURE ISLAND  
SAN FRANCISCO, CA 94130  
(415) 274-0660  
FAX (415) 274-0299

TREASURE ISLAND DEVELOPMENT AUTHORITY  
SPECIAL MEETING AGENDA

Thursday, March 29, 2001 9A.M.

DOCUMENTS DEPT.

Room 400, City Hall  
1 Dr. Carlton Goodlett Place

MAR 23 2001

Willie L. Brown, Jr., Mayor

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Gerald Green  
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Annemarie Conroy, Executive Director  
London Breed, Commission Secretary

ORDER OF BUSINESS

1. Call to Order and Roll Call
2. Approval of Minutes (*Action Item*)
3. Communications (*Discussion Item*)
4. Report of the Treasure Island Project Director Annemarie Conroy (*Discussion Item*)
  - Report on access to Treasure Island including public use last month
  - Status of environmental clean up
  - Report on short-term leases
  - Report on San Francisco-Oakland Bay Bridge/Caltrans issues
  - Report on Treasure Island community issues
  - Report on Citizens Advisory Board
  - Report on TIHDI
  - Financial Report
  - Legislation/hearings affecting Treasure Island
5. General Public Comment (*Discussion Item*)
6. Ongoing Business by Directors and Introduction of New Business by members (*Discussion Item*)
7. Resolution approving a Contract with URS for \$300,000 to Prepare a programmatic Environmental Impact Report for Former Naval Station Treasure Island (*Action Item*)
8. Resolution accepting five murals by artist Miguel Covarrubias from the 1939 Pan-Pacific Exposition on Treasure Island as gifts from the Port of San Francisco (*Action Item*)
9. Resolution Authorizing the Executive Director to Extend a Month-to-Month Sublease for Building 99 with Island Creative Management, Inc. (*Action Item*)

10. Resolution Authorizing the Executive Director to Extend a Month-to-Month Sublease for Building 62 with W Wong Construction Company, Inc. (*Action Item*)
11. Resolution Authorizing the Executive Director to Execute an Amendment to the Land and Structures Master Lease with the United States Navy to add 35,000 square feet of Paved Property (*Action Item*)
12. Resolution Authorizing the Executive Director to Execute a Sublease with the Treasure Island Homeless Development Initiative for 35,000 Square Feet of Paved Property (*Action Item*)
13. Resolution Authorizing the Executive Director to Execute a Contract with Toolworks, Inc. a Member Organization of the Treasure Island Homeless Development Initiative, and a California Public Benefit Corporation, For an amount not to exceed \$125,000 to provide janitorial and other building services for the period of March 2001 through February 2002 (*Action Item*)
14. Resolution Authorizing an Amendment to the Sublease with the John Stewart Company to Expand the "San Francisco Essentials" Preference Category to include Licensed Health Care Professionals (*Action Item*)
15. Authorizing the Executive Director to execute a contract with Rubicon Enterprises, Inc, a member organization of the Treasure Island Homeless Development Initiative, to provide landscaping and grounds maintenance services for an amount not to exceed \$600,000 (*Action Item*)
16. Resolution approving a gift in honor of Robert Mahoney, Deputy Director & Facilities Manager for TIDA, from the John Stewart Company for a landscaping project on Perimeter Path (*Action Item*)
17. Adjourn

*Relevant documents such as resolutions, staff summaries, leases, subleases are available at the Treasure Island Project Office and the Government Information Center at the Main Library, 100 Larkin Street. Public comment is taken on each item on the agenda.*

#### **MEETING AGENDAS NOW AVAILABLE ON E-MAIL**

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#### **Disability Access**

The Treasure Island Development Authority will meet at City Hall, 1 Dr. Carlton Goodlett Place. City Hall is accessible to persons using wheelchairs, and others with disabilities. For American Sign Language interpreters or use of a reader during a meeting, a sound enhancement system, and/or alternative formats of the agenda and minutes, please telephone 554-6789 at least 72 hours before a meeting.

In order to assist the City's efforts to accommodate persons with severe allergies, environmental illnesses, multiple chemical sensitivity or related disabilities, attendees at public meetings are reminded that other attendees may be sensitive to various chemical based products. Please help the City accommodate these individuals.



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# Memo

**To:** TIDA Board Members  
**From:** London Breed, <sup>LB</sup>Commission Secretary  
**Date:** 03/22/01  
**Re:** TIDA Special Meeting Materials

Attached to this memo are the agenda for the Special TIDA meeting on Thursday, March 29, 2001 and the materials for two additional items number 15 and 16 that were added to the previous March 14, 2001 agenda. All materials provided in your packets for March 14, 2001 are still valid. However, please replace the March 14, 2001 agenda with the March 29, 2001 agenda. The additional items enclosed should be placed in back of the packets after tab number 15.

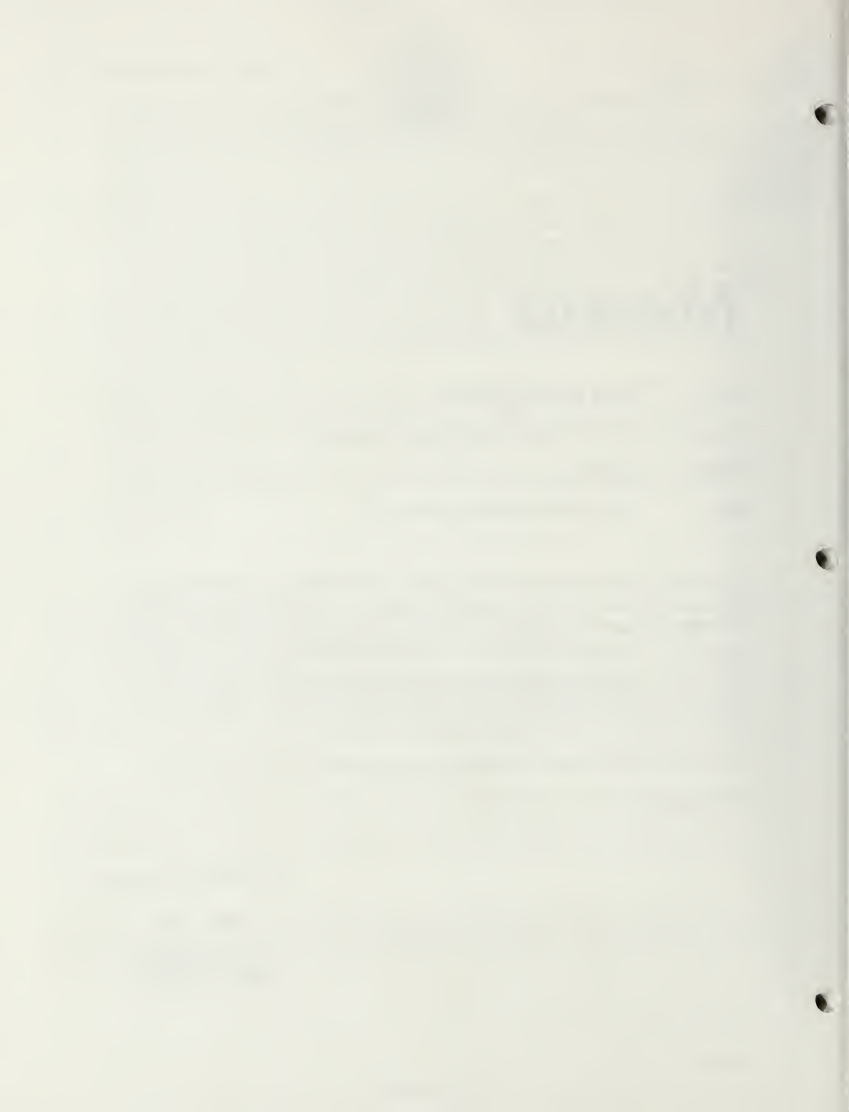
If there are any questions, please contact me directly @415-274-0665.

Thank you.

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**AGENDA ITEM**  
**TREASURE ISLAND DEVELOPMENT AUTHORITY**  
**City and County of San Francisco**

**Agenda Item No. 15**

**Meeting of March 29, 2001**

**Subject:** Request for Approval of Contract with Rubicon Enterprises, Inc. for landscaping and grounds maintenance services for the period March 2000 through February 2001 for an amount not to exceed \$780,000

**Contact/Phone:** Annemarie Conroy, Executive Director  
Robert Mahoney, Deputy Executive Director  
Eila Arbuckle, Finance Manager  
274-0660

**SUMMARY OF PROPOSED ACTION**

Authorize execution of a new contract with Rubicon, a member organization of the Treasure Island Homeless Development Initiative, for landscaping and grounds maintenance services for the period March 2001 through February 2002, for an amount not to exceed \$780,000.

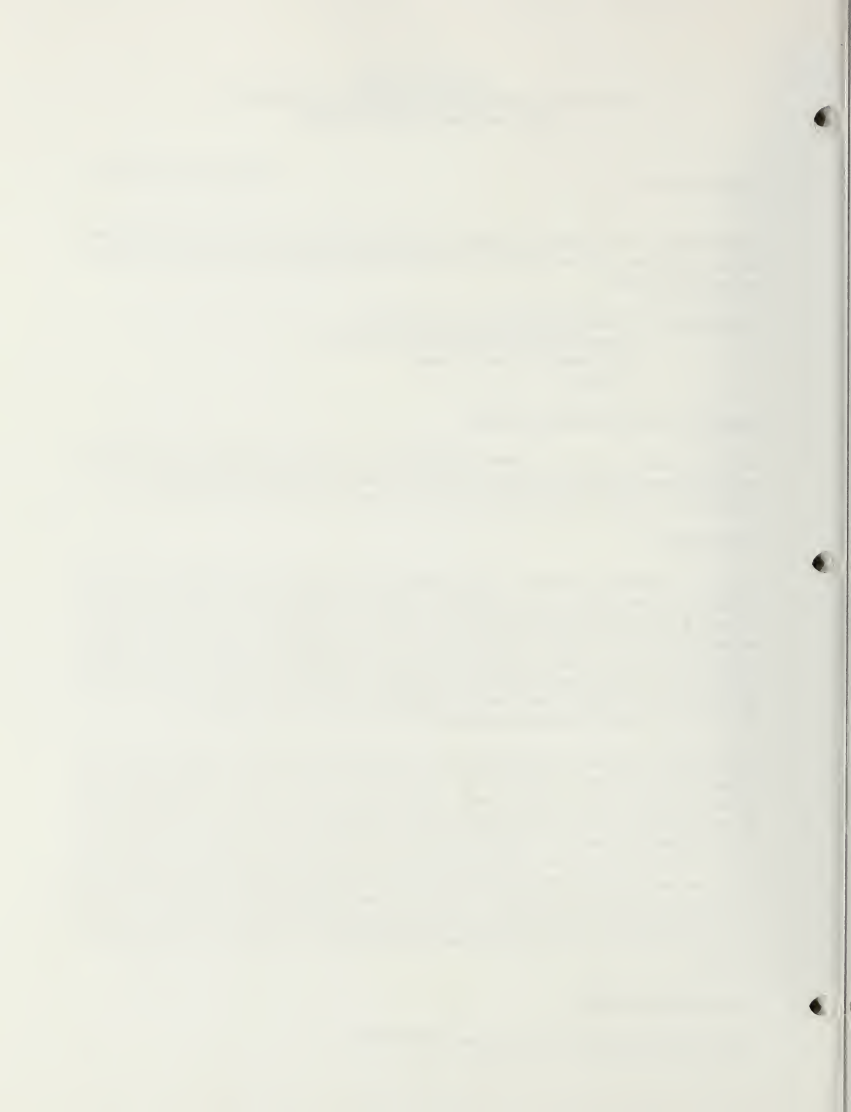
**DISCUSSION**

Rubicon, a member organization of the Treasure Island Homeless Development Initiative (TIHDI), is a non-profit agency organized to provide services to train homeless and other economically disadvantaged persons for jobs. One of its programs is contractual grounds maintenance services. These are identified in the draft Homeless Component of the Treasure Island Reuse Plan as one of the economic development opportunities available to assist homeless and other economically disadvantaged San Franciscans. The Board of Supervisors has authorized the Authority to engage in sole source negotiations with TIHDI member organizations for contracts for economic development opportunities identified in the Reuse Plan.

Landscaping and grounds maintenance services are required to fulfill the requirements of the agreement for caretaker services between the Authority and the Navy, as well as to promote public health and safety on former naval station Treasure Island. The TI Project staff have divided Treasure and Yerba Buena Islands into landscaping parcels and have established three levels of landscaping services. Maps of the parcels are Exhibits 1 and 2 to the attached contract, and a detailed outline of each of the levels of service is provided in Exhibit 3. Rubicon will follow the requirements of the City and County of San Francisco's Integrated Pest Management Program in carrying out its activities. The total amount of the proposed contract is \$780,000, with monthly payments of \$49,951.50. Approximately \$180,000 of the total Rubicon contract amount is included to fund as needed services identified in the contract as special adjunct services.

**RECOMMENDATION**

Staff recommends approval of the contract with Rubicon.





**AUTHORIZING THE EXECUTIVE DIRECTOR TO EXECUTE A CONTRACT WITH RUBICON ENTERPRISES, INC. FOR LANDSCAPING AND GROUNDS MAINTENANCE SERVICES ON TREASURE AND YERBA BUENA ISLANDS FOR AN AMOUNT NOT TO EXCEED SEVEN HUNDRED THOUSAND DOLLARS (\$700,000).**

WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America ("the Federal Government"); and,

WHEREAS, Treasure Island was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

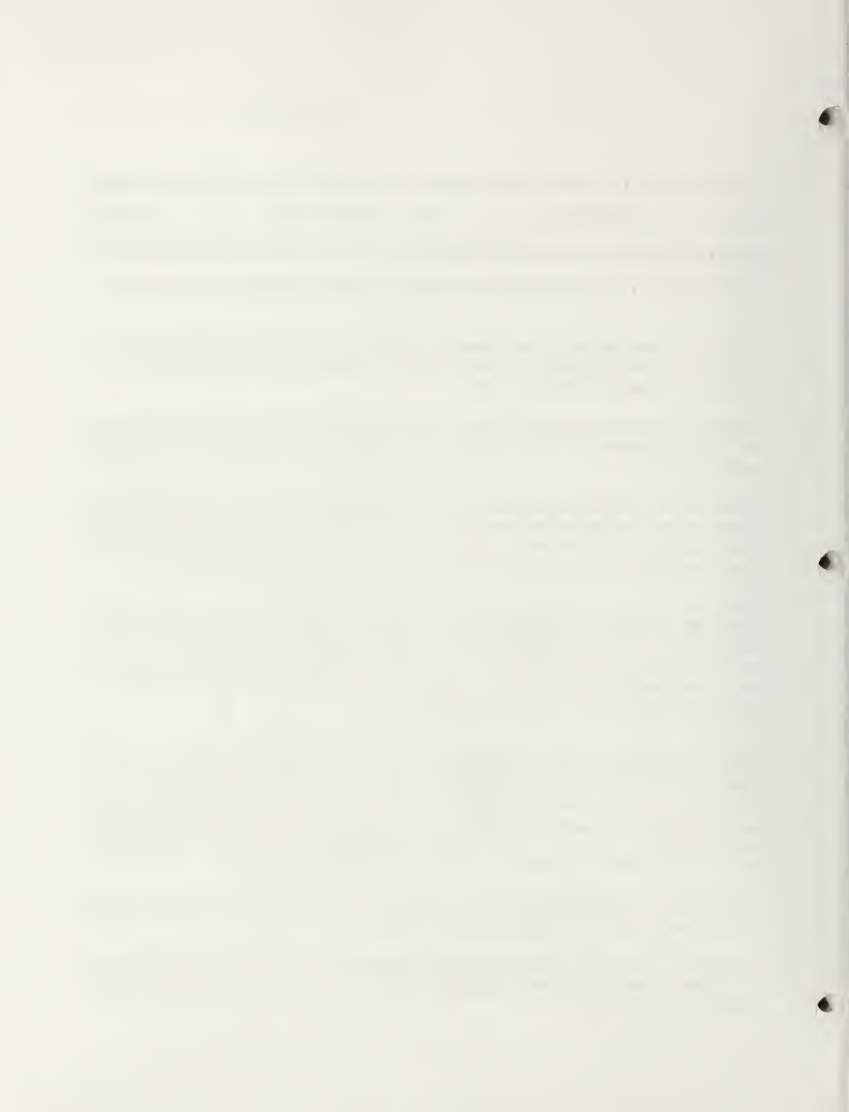
WHEREAS, In 1995, the General Services Administration and the Bureau of Land Management determined that Yerba Buena Island was surplus to the Federal Government's needs and could be transferred to the administrative jurisdiction of the Department of Defense under the Base Closure and Realignment Act of 1990 and disposed of together with Treasure Island; and,

WHEREAS, On May 2, 1997, the City's Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (I) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the Base which are subject to Tidelands Trust, vested in the Authority the Authority to administer the public trust for commerce, navigation and fisheries as to such property; and

WHEREAS, The Board of Supervisors approved the designation of the Authority as a redevelopment agency for Treasure Island in 1997; and,

WHEREAS, The Board of Supervisors authorized sole sourcing certain grounds maintenance and janitorial contracts to homeless support providers on July 25, 1996, through Resolution Number 672-96; and



WHEREAS, It is necessary to provide landscaping and grounds maintenance services to fulfill the requirements of the Authority's contract with the United States navy for caretaker services on the Base, and to promote public health and safety on the Base; and

WHEREAS, the Authority wishes to support the Homeless Assistance Component of the Treasure Island Reuse Plan; and

WHEREAS, the Contractor is a member of the Treasure Island Homeless Development Initiative; and

WHEREAS, the Contractor represents and warrants that it is qualified to perform the landscaping and grounds maintenance services required by the Authority as set forth in this Agreement; and

WHEREAS, the Authority has negotiated with the Contractor to reach agreement on the scope of work, and budget for landscaping and grounds maintenance as shown in Appendices A and B;

WHEREAS, the Authority has negotiated with the Contractor to reach agreement on the boundaries of each parcel identified in Exhibits 1 and 2 to facilitate anticipated contract amendments that will eliminate various parcels from this Agreement as such parcels are subleased to various tenants; and

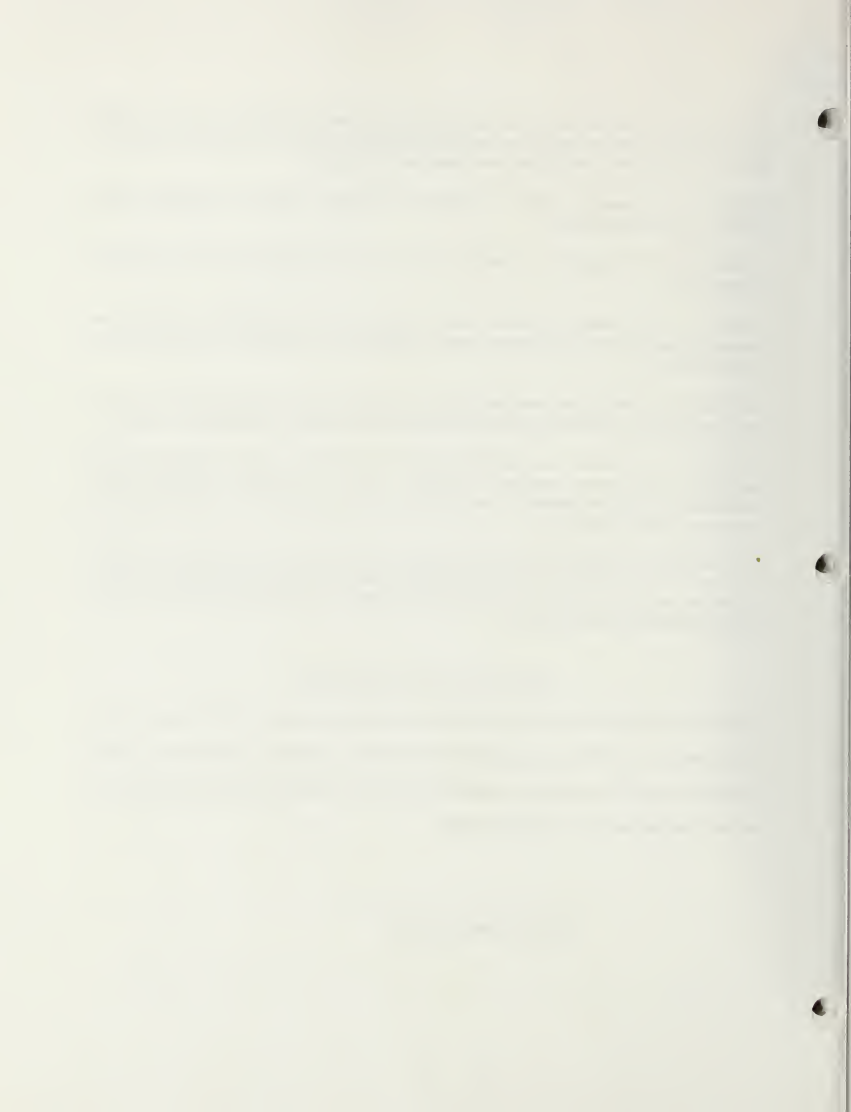
NOW, therefore be it RESOLVED, That the Authority hereby authorizes the Executive Director to execute a contract with the Rubicon Enterprises Group, Inc. for landscaping and grounds maintenance services on Treasure and Yerba Buena Islands, for an amount not to exceed seven hundred thousand dollars (\$700,000).

#### CERTIFICATE OF SECRETARY

I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development, a California nonprofit public benefit corporation, and that the above Resolution was duly adopted and approved by the Board of Directors of the Authority at a properly noticed meeting on April 12, 2000.

---

John Elberling, Secretary







**City and County of San Francisco  
Treasure Island Development Authority  
Treasure Island Building One  
410 Palm Avenue  
San Francisco, California 94130**

**Agreement between the TREASURE ISLAND DEVELOPMENT AUTHORITY and  
AND**

**"RUBICON ENTERPRISES, INC."**

This Agreement is made this first day of March 2001, in the City and County of San Francisco ("City"), State of California, by and between Rubicon Enterprises, Inc., hereinafter referred to as "Contractor," and the Treasure Island Development Authority, hereinafter referred to as "Authority," acting by and through the Executive Director of the Authority

Recitals

WHEREAS, Naval Station Treasure Island is a military base located on Treasure Island and Yerba Buena Island (together, the "Base"), which is currently owned by the United States of America ("the Federal Government"); and,

WHEREAS, Treasure Island was selected for closure and disposition by the Base Realignment and Closure Commission in 1993, acting under Public Law 101-510, and its subsequent amendments; and,

WHEREAS, In 1995, the General Services Administration and the Bureau of Land Management determined that Yerba Buena Island was surplus to the Federal Government's needs and could be transferred to the administrative jurisdiction of the Department of Defense under the Base Closure and Realignment Act of 1990 and disposed of together with Treasure Island; and,

WHEREAS, On May 2, 1997, the City's Board of Supervisors passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office to establish a nonprofit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse and conversion of the Base for the public interest, convenience, welfare and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health and Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (1) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the City's Board of Supervisors, and (ii) with respect to those portions of the Base which are subject to Tidelands Trust, vested in the Authority the Authority to administer the public trust for commerce, navigation and fisheries as to such property; and

WHEREAS, The Board of Supervisors approved the designation of the Authority as a redevelopment agency for Treasure Island in 1997; and,

WHEREAS, The Board of Supervisors authorized sole sourcing certain grounds maintenance and janitorial contracts to homeless support providers on July 25, 1996, through Resolution Number 672-96; and

WHEREAS, It is necessary to provide landscaping and grounds maintenance services to fulfill the requirements of the Authority's contract with the United States navy for caretaker services on the Base, and to promote public health and safety on the Base; and

WHEREAS, the Authority wishes to support the Homeless Assistance Component of the Treasure Island Reuse Plan; and

WHEREAS, the Contractor is a member of the Treasure Island Homeless Development Initiative; and

WHEREAS, the Contractor represents and warrants that it is qualified to perform the landscaping and grounds maintenance services required by the Authority as set forth in this Agreement; and

WHEREAS, the Authority has negotiated with the Contractor to reach agreement on the scope of work, and budget for landscaping and grounds maintenance as shown in Appendices A and B;

WHEREAS, the Authority has negotiated with the Contractor to reach agreement on the boundaries of each parcel identified in Exhibits 1 and 2 to facilitate anticipated contract amendments that will eliminate various parcels from this Agreement as such parcels are subleases to various tenants; and

Now, THEREFORE, the parties agree as follows:

**1. Certification of Funds; Budget and Fiscal Provisions; Termination in the Event of Non-Appropriation**

This Agreement is subject to the budget and fiscal provisions of the City's Charter. Charges will accrue only after prior written authorization certified by the Controller, and the amount of Authority's obligation hereunder shall not at any time exceed the amount certified for the purpose and period stated in such advance authorization.

This Agreement will terminate without penalty, liability or expense of any kind to Authority at the end of any fiscal year if funds are not appropriated for the next succeeding fiscal year. If funds are appropriated for a portion of the fiscal year, this Agreement will terminate, without penalty, liability or expense of any kind at the end of the term for which funds are appropriated.

Authority and City have no obligation to make appropriations for this Agreement in lieu of appropriations for new or other agreements. City budget decisions are subject to the discretion of the Mayor and the Board of Supervisors. Contractor's assumption of risk of possible non-appropriation is part of the consideration for this Agreement.



THIS SECTION CONTROLS AGAINST ANY AND ALL OTHER PROVISIONS OF THIS AGREEMENT.

**2. Term of the Agreement**

Subject to Section 1, the term of this Agreement shall be from March 1, 2001 through February 28, 2002.

**3. Effective Date of Agreement**

This Agreement shall become effective when the Controller has certified to the availability of funds and Contractor has been notified in writing.

**4. Services Contractor Agrees to Perform**

The Contractor agrees to perform the tasks outlined in Appendix A "Scope of Services".

**5. Compensation**

Compensation shall be made through monthly invoices for services that the Executive Director of the Treasure Island Development Authority, in her sole discretion, concludes have been performed as of the last day of each month. In no event shall the amount of this Agreement **SEVEN HUNDRED EIGHTY THOUSAND DOLLARS (\$780,000)**. Contractor shall invoice the Authority at a flat rate of **FORTY-NINE THOUSAND NINE HUNDRED FIFTY-ONE DOLLARS AND FIFTY CENTS (\$49,951.50)** per month for routine landscaping and grounds maintenance services, and shall separately identify indefinite quantity work services and the fees for such services on each invoice. Indefinite quantify work services must be approved in writing by the Authority prior to Contractor commencing any indefinite quantity work.

No charges shall be incurred under this Agreement nor shall any payments become due to Contractor until services required under this Agreement are received from Contractor and approved by the Treasure Island Project as being in accordance with this Agreement. Authority may withhold payment to Contractor in any instance in which Contractor has failed or refused to satisfy any material obligation provided for under this Agreement.

In no event shall Authority be liable for interest or late charges for any late payments.

**6. Guaranteed Maximum Costs**

(a) The Authority's obligation hereunder shall not at any time exceed the amount certified by the Controller for the purpose and period stated in such certification.

(b) Except as may be provided by laws governing emergency procedures, officers and employees of Authority and/or City are not authorized to request, and the Authority is not required to reimburse the Contractor for, Commodities or Services beyond the agreed upon contract scope unless the changed scope is authorized by amendment and approved as required by law.

(c) Officers and employees of the Authority and/or City are not authorized to offer or promise, nor are the Authority and/or City required to honor, any offered or promised additional funding in excess of the maximum amount of funding for which the contract is certified without certification of the additional amount by the Controller.

(d) The Controller is not authorized to make payments on any contract for which funds have not been certified as available in the budget or by supplemental appropriation.

## **7. Payment; Invoice Format**

Invoices furnished by Contractor under this Agreement must be in a form acceptable to the Controller and must include the Contract Progress Payment Authorization number. Any reimbursements claimed for direct expenses must be accompanied by appropriate back-up documentation. Each invoice shall cover only a single calendar month. Any invoice submitted by Contractor that does not include all required documentation will be returned to Contractor unprocessed. All amounts paid by Authority to Contractor shall be subject to audit by Authority.

Payment shall be made by Authority to Contractor at the address specified in the section entitled "Notices to the Parties."

## **8. Submitting False Claims; Monetary Penalties**

Pursuant to San Francisco Administrative Code §21.35, any contractor, subcontractor or consultant who submits a false claim shall be liable to the Authority for three times the amount of damages which the Authority sustains because of the false claim. A contractor, subcontractor or consultant who submits a false claim shall also be liable to the Authority for the costs, including attorneys' fees, of a civil action brought to recover any of those penalties or damages, and may be liable to the Authority for a civil penalty of up to \$10,000 for each false claim. A contractor, subcontractor or consultant will be deemed to have submitted a false claim to the Authority if the contractor, subcontractor or consultant: (a) knowingly presents or causes to be presented to an officer or employee of the Authority or City a false claim or request for payment or approval; (b) knowingly makes, uses, or causes to be made or used a false record or statement to get a false claim paid or approved by the Authority or City; (c) conspires to defraud the Authority or City by getting a false claim allowed or paid by the Authority; (d) knowingly makes, uses, or causes to be made or used a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money or property to the Authority or City; or (e) is a beneficiary of an inadvertent submission of a false claim to the Authority or City, subsequently discovers the falsity of the claim, and fails to disclose the false claim to the Authority or City within a reasonable time after discovery of the false claim.

## **9. Disallowance**

If Contractor claims or receives payment from Authority or City for a service, reimbursement for which is later disallowed by the State of California or United States Government, Contractor shall promptly refund the disallowed amount to Authority upon Authority's request. At its option, Authority may offset the amount disallowed from any payment due or to become due to Contractor under this Agreement or any other Agreement.

By executing this Agreement, Contractor certifies that Contractor is not suspended, debarred or otherwise excluded from participation in federal assistance programs. Contractor acknowledges that this certification of eligibility to receive federal funds is a material terms of the Agreement.

## **10. Taxes**

a. Payment of any taxes, including possessory interest taxes and California sales and use taxes, levied upon or as a result of this Agreement, or the services delivered pursuant hereto, shall be the obligation of Contractor.

b. Contractor recognizes and understands that this Agreement may create a "possessory interest" for property tax purposes. Generally, such a possessory interest is not created unless the Agreement entitles the Contractor to possession, occupancy, or use of Authority or City property for private gain. If such a possessory interest is created, then the following shall apply:

- (1) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that Contractor, and any permitted successors and assigns, may be subject to real property tax assessments on the possessory interest;
- (2) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that the creation, extension, renewal, or assignment of this Agreement may result in a "change in ownership" for purposes of real property taxes, and therefore may result in a revaluation of any possessory interest created by this Agreement. Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report on behalf of the Authority to the Assessor of the City and County of San Francisco ("Assessor") the information required by Revenue and Taxation Code section 480.5, as amended from time to time, and any successor provision.
- (3) Contractor, on behalf of itself and any permitted successors and assigns, recognizes and understands that other events also may cause a change of ownership of the possessory interest and result in the revaluation of the possessory interest. (see, e.g., Rev. & Tax. Code section 64, as amended from time to time) Contractor accordingly agrees on behalf of itself and its permitted successors and assigns to report any change in ownership to the Assessor, the State Board of Equalization or other public agency as required by law.
- (4) Contractor further agrees to provide such other information as may be requested by the Authority to enable the Authority to comply with any reporting requirements for possessory interests that are imposed by applicable law.

## **11. Payment Does Not Imply Acceptance of Work**

The granting of any payment by Authority or City, or the receipt thereof by Contractor, shall in no way lessen the liability of Contractor to replace unsatisfactory work, equipment, or

materials, although the unsatisfactory character of such work, equipment or materials may not have been apparent or detected at the time such payment was made. Materials, equipment, components, or workmanship that do not conform to the requirements of this Agreement may be rejected by Authority and in such case must be replaced by Contractor without delay.

## **12. Qualified Personnel**

Work under this Agreement shall be performed only by competent personnel under the supervision of and in the employment of Contractor. Contractor will comply with Authority's reasonable requests regarding assignment of personnel, but all personnel, including those assigned at Authority's request, must be supervised by Contractor. Contractor shall commit adequate resources to complete the project within the project schedule specified in this Agreement.

## **13. Responsibility for Equipment**

Authority and City shall not be responsible for any damage to persons or property as a result of the use, misuse or failure of any equipment used by Contractor, or by any of its employees, even though such equipment be furnished, rented or loaned to Contractor by Authority or City.

## **14. Independent Contractor; Payment of Taxes and Other Expenses**

a. Independent Contractor: Contractor shall be deemed at all times to be an independent contractor and is wholly responsible for the manner in which it performs the services and work requested by Authority under this Agreement. Contractor is liable for the acts and omissions of itself, its employees and its agents. Nothing in this Agreement shall be construed as creating an employment or agency relationship between Authority or City and Contractor.

Any terms in this Agreement referring to direction from Authority shall be construed as providing for direction as to policy and the result of Contractor's work only, and not as to the means by which such a result is obtained.

b. Payment of Taxes and Other Expenses: Should City, in its discretion, or a relevant taxing authority such as the Internal Revenue Service or the State Employment Development Division, or both, determine that Contractor is an employee for purposes of collection of any employment taxes, the amounts payable under this Agreement shall be reduced by amounts equal to both the employee and employer portions of the tax due (and offsetting any credits for amounts already paid by Contractor which can be applied against this liability). City shall then forward those amounts to the relevant taxing authority.

Should a relevant taxing authority determine a liability for past services performed by Contractor for Authority, upon notification of such fact by Authority, Contractor shall promptly remit such amount due or arrange with Authority to have the amount due withheld from future payments to Contractor under this Agreement (again, offsetting any amounts already paid by Contractor which can be applied as a credit against such liability).

A determination of employment status pursuant to the preceding two paragraphs shall be solely for the purposes of the particular tax in question, and for all other purposes of this Agreement, Contractor shall not be considered an employee of Authority or City.

Notwithstanding the foregoing, should any court, arbitrator, or administrative authority determine that Contractor is an employee for any other purpose, then Contractor agrees to a reduction in Authority's financial liability so that Authority's total expenses under this Agreement are not greater than they would have been had the court, arbitrator, or administrative authority determined that Contractor was not an employee.

## **15. Insurance**

a. Without in any way limiting Contractor's liability pursuant to the "Indemnification" section of this Agreement, Contractor must maintain in force, during the full term of the Agreement, insurance in the following amounts and coverages:

- (1) Workers' Compensation, with Employers' Liability Limits not less than \$1,000,000 each accident; and
- (2) Commercial General Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Contractual Liability, Personal Injury, Products and Completed Operations; and
- (3) Business Automobile Liability Insurance with limits not less than \$1,000,000 each occurrence Combined Single Limit for Bodily Injury and Property Damage, including Owned, Non-Owned and Hired auto coverage, as applicable.

b. Commercial General Liability and Business Automobile Liability Insurance policies must provide the following:

- (1) Name as Additional Insured the Treasure Island Development Authority, the City and County of San Francisco, and their Officers, Agents, and Employees.
- (2) That such policies are primary insurance to any other insurance available to the Additional Insureds, with respect to any claims arising out of this Agreement, and that insurance applies separately to each insured against whom claim is made or suit is brought.

c. All policies shall provide thirty (30) days' advance written notice to Authority of cancellation mailed to the following address:

**Treasure Island Development Authority**  
**Treasure Island Building One**  
**410 Palm Avenue**  
**San Francisco CA 94130**

d. Should any of the required insurance be provided under a claims-made form, Contractor shall maintain such coverage continuously throughout the term of this Agreement and, without lapse, for a period of three years beyond the expiration of this Agreement, to the effect that, should occurrences during the contract term give rise to claims made after expiration of the Agreement, such claims shall be covered by such claims-made policies.

e. Should any of the required insurance be provided under a form of coverage that includes a general annual aggregate limit or provides that claims investigation or legal defense costs be included in such general annual aggregate limit, such general annual aggregate limit shall be double the occurrence or claims limits specified above.

f. Should any required insurance lapse during the term of this Agreement, requests for payments originating after such lapse shall not be processed until the Authority receives satisfactory evidence of reinstated coverage as required by this Agreement, effective as of the lapse date. If insurance is not reinstated, the Authority may, at its sole option, terminate this Agreement effective on the date of such lapse of insurance.

g. Before commencing any operations under this Agreement, Contractor must furnish to Authority certificates of insurance, in form and with insurers satisfactory to Authority, evidencing all coverages set forth above, and shall furnish complete copies of policies promptly upon Authority request.

h. Approval of the insurance by Authority shall not relieve or decrease the liability of Contractor hereunder.

#### **16. Indemnification**

Contractor shall indemnify and save harmless Authority and City and their officers, agents and employees from, and, if requested, shall defend them against any and all loss, damage, injury, liability, and claims thereof for injury to or death of a person, including employees of Contractor or loss of or damage to property, resulting directly or indirectly from Contractor's performance of this Agreement, including, but not limited to, the use of Contractor's facilities or equipment provided by Authority or others, regardless of the negligence of, and regardless of whether liability without fault is imposed or sought to be imposed on Authority, except to the extent that such indemnity is void or otherwise unenforceable under applicable law in effect on or validly retroactive to the date of this Agreement, and except where such loss, damage, injury, liability or claim is the result of the active negligence or willful misconduct of Authority and is not contributed to by any act of, or by any omission to perform some duty imposed by law or agreement on Contractor, its subcontractors or either's agent or employee.

In addition to Contractor's obligation to indemnify Authority and City, Contractor specifically acknowledges and agrees that it has an immediate and independent obligation to defend Authority and City from any claim which actually or potentially falls within this indemnification provision, even if the allegations are or may be groundless, false or fraudulent, which obligation arises at the time such claim is tendered to Contractor by Authority and continues at all times thereafter.

Contractor shall indemnify and hold Authority and City harmless from all loss and liability, including attorneys' fees, court costs and all other litigation expenses for any infringement of the patent rights, copyright, trade secret or any other proprietary right or trademark, and all other intellectual property claims of any person or persons in consequence of the use by Authority, or any of its officers or agents, of articles or services to be supplied in the performance of this Agreement.

## **17. Incidental and Consequential Damages**

Contractor shall be responsible for incidental and consequential damages resulting in whole or in part from Contractor's acts or omissions. Nothing in this Agreement shall constitute a waiver or limitation of any rights which Authority may have under applicable law.

## **18. Liability of Authority and City**

AUTHORITY'S AND CITY'S PAYMENT OBLIGATIONS UNDER THIS AGREEMENT SHALL BE LIMITED TO THE PAYMENT OF THE COMPENSATION PROVIDED FOR IN SECTION 5 OF THIS AGREEMENT. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, IN NO EVENT SHALL AUTHORITY OR CITY BE LIABLE, REGARDLESS OF WHETHER ANY CLAIM IS BASED ON CONTRACT OR TORT, FOR ANY SPECIAL, CONSEQUENTIAL, INDIRECT OR INCIDENTAL DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED IN CONNECTION WITH THIS AGREEMENT.

## **19. Left blank by agreement of the parties."**

## **20. Default; Remedies**

a. Each of the following shall constitute an event of default ("Event of Default") under this Agreement:

- (1) Contractor fails or refuses to perform or observe any term, covenant or condition contained in any of the following Sections of this Agreement: 8, 10, 15, 24, 30, 37, or 49.
- (2) Contractor fails or refuses to perform or observe any other term, covenant or condition contained in this Agreement, and such default continues for a period of ten (10) days after written notice thereof from Authority to Contractor.
- (3) Contractor (A) is generally not paying its debts as they become due, (B) files, or consents by answer or otherwise to the filing against it of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any jurisdiction, (C) makes an assignment for the benefit of its creditors, (D) consents to the appointment of a custodian, receiver, trustee or other officer with similar powers of Contractor or of any substantial part of Contractor's property or (E) takes action for the purpose of any of the foregoing.
- (4) A court or government authority enters an order (A) appointing a custodian, receiver, trustee or other officer with similar powers with respect to Contractor or with respect to any substantial part of Contractor's property, (B) constituting an order for relief or approving a petition for relief or reorganization or arrangement or any other petition in bankruptcy or for liquidation or to take advantage of any bankruptcy, insolvency or other debtors' relief law of any



jurisdiction or (C) ordering the dissolution, winding-up or liquidation of Contractor.

b. On and after any Event of Default, Authority shall have the right to exercise its legal and equitable remedies, including, without limitation, the right to terminate this Agreement or to seek specific performance of all or any part of this Agreement. In addition, Authority shall have the right (but no obligation) to cure (or cause to be cured) on behalf of Contractor any Event of Default; Contractor shall pay to Authority on demand all costs and expenses incurred by Authority in effecting such cure, with interest thereon from the date of incurrence at the maximum rate then permitted by law. Authority shall have the right to offset from any amounts due to Contractor under this Agreement or any other agreement between Authority and Contractor all damages, losses, costs or expenses incurred by Authority as a result of such Event of Default and any liquidated damages due from Contractor pursuant to the terms of this Agreement or any other agreement.

c. All remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

## **21. Termination for Convenience**

a. Authority shall have the option, in its sole discretion, to terminate this Agreement, at any time during the term hereof, for convenience and without cause. Authority shall exercise this option by giving Contractor written notice of termination. The notice shall specify the date on which termination shall become effective.

b. Upon receipt of the notice, Contractor shall commence and perform, with diligence, all actions necessary on the part of Contractor to effect the termination of this Agreement on the date specified by Authority and to minimize the liability of Contractor and Authority to third parties as a result of termination. All such actions shall be subject to the prior approval of Authority. Such actions shall include, without limitation:

- (1) Halting the performance of all services and other work under this Agreement on the date(s) and in the manner specified by Authority.
- (2) Not placing any further orders or subcontracts for materials, services, equipment or other items.
- (3) Terminating all existing orders and subcontracts.
- (4) At Authority's direction, assigning to Authority any or all of Contractor's right, title, and interest under the orders and subcontracts terminated. Upon such assignment, Authority shall have the right, in its sole discretion, to settle or pay any or all claims arising out of the termination of such orders and subcontracts.
- (5) Subject to Authority's approval, settling all outstanding liabilities and all claims arising out of the termination of orders and subcontracts.



- (6) Completing performance of any services or work which Authority designates to be completed prior to the date of termination specified by Authority.
- (7) Taking such action as may be necessary, or as the Authority may direct, for the protection and preservation of any property related to this Agreement which is in the possession of Contractor and in which Authority has or may acquire an interest.

c. Within 30 days after the specified termination date, Contractor shall submit to Authority an invoice, which shall set forth each of the following as a separate line item:

- (1) The reasonable cost to Contractor, without profit, for all services and other work Authority directed Contractor to perform prior to the specified termination date, for which services or work Authority has not already tendered payment. Reasonable costs may include a reasonable allowance for actual overhead, not to exceed a total of ten percent (10%) of Contractor's direct costs for services or other work. Any overhead allowance shall be separately itemized. Contractor may also recover the reasonable cost of preparing the invoice.
- (2) A reasonable allowance for profit on the cost of the services and other work described in the immediately preceding subsection (1), provided that Contractor can establish, to the satisfaction of Authority, that Contractor would have made a profit had all services and other work under this Agreement been completed, and provided further, that the profit allowed shall in no event exceed 5 percent (5%) of such cost.
- (3) The reasonable cost to Contractor of handling material or equipment returned to the vendor, delivered to the Authority or otherwise disposed of as directed by the Authority.
- (4) A deduction for the cost of materials to be retained by Contractor, amounts realized from the sale of materials and not otherwise recovered by or credited to Authority, and any other appropriate credits to City against the cost of the services or other work.

d. In no event shall Authority be liable for costs incurred by Contractor or any of its subcontractors after the termination date specified by Authority, except for those costs specifically enumerated and described in the immediately preceding subsection (c). Such non-recoverable costs include, but are not limited to, anticipated profits on this Agreement, post-termination employee salaries, post-termination administrative expenses, post-termination overhead or unabsorbed overhead, attorneys' fees or other costs relating to the prosecution of a claim or lawsuit, prejudgment interest, or any other expense which is not reasonable or authorized under such subsection (c).

e. In arriving at the amount due to Contractor under this Section, Authority may deduct: (1) all payments previously made by Authority for work or other services covered by Contractor's final invoice; (2) any claim which Authority may have against Contractor in connection with this Agreement; (3) any invoiced costs or expenses excluded pursuant to the immediately preceding subsection (d); and (4) in instances in which, in the opinion of the

Authority, the cost of any service or other work performed under this Agreement is excessively high due to costs incurred to remedy or replace defective or rejected services or other work, the difference between the invoiced amount and Authority's estimate of the reasonable cost of performing the invoiced services or other work in compliance with the requirements of this Agreement.

f. Authority's payment obligation under this Section shall survive termination of this Agreement.

## **22. Rights and Duties Upon Termination or Expiration**

a. This Section and the following Sections of this Agreement shall survive termination or expiration of this Agreement: 8, 9, 10, 11, 13, 14, 16, 17, 18, 24, 25, 26, 27, 28, 30, 43, 45 through 48, and 50.

b. Subject to the immediately preceding subsection (a), upon termination of this Agreement prior to expiration of the term specified in Section 2, this Agreement shall terminate and be of no further force or effect. Contractor shall transfer title to Authority, and deliver in the manner, at the times, and to the extent, if any, directed by Authority, any work in progress, completed work, supplies, equipment, and other materials produced as a part of, or acquired in connection with the performance of this Agreement, and any completed or partially completed work which, if this Agreement had been completed, would have been required to be furnished to Authority. This subsection shall survive termination of this Agreement.

## **23. Conflict of Interest**

Through its execution of this Agreement, Contractor acknowledges that it is familiar with the provisions of §15.103 and Appendix C 8.105 of City's Charter and §87100 et seq. of the Government Code of the State of California, and certifies that it does not know of any facts which constitute a violation of said provisions.

## **24. Proprietary or Confidential Information of Authority and City**

Contractor understands and agrees that, in the performance of the work or services under this Agreement or in contemplation thereof, Contractor may have access to private or confidential information which may be owned or controlled by Authority or City and that such information may contain proprietary or confidential details, the disclosure of which to third parties may be damaging to Authority or City. Contractor agrees that all information disclosed by Authority or City to Contractor shall be held in confidence and used only in performance of the Agreement. Contractor shall exercise the same standard of care to protect such information as a reasonably prudent contractor would use to protect its own proprietary data.

## **25. Notices to the Parties**

Unless otherwise indicated elsewhere in this Agreement, all written communications sent by the parties may be by U.S. mail, e-mail or by fax, and shall be addressed as follows:

To Authority and City:

**Annemarie Conroy, Executive Director  
Treasure Island Development Authority**

**Treasure Island Building One  
410 Palm Avenue  
San Francisco, CA 94130  
Email= Annemarie Conroy @ci.sf.ca.is.com  
Fax = 415/274-0299**

To Contractor:

Rick Aubry, President  
Rubicon Enterprises, Inc.  
2500 Bissell Avenue  
Richmond CA 94804

Any notice of default must be sent by registered mail.

## **26. Ownership of Results**

Any interest of Contractor or its Subcontractors, in drawings, plans, specifications, blueprints, studies, reports, memoranda, computation sheets, computer files and media or other documents prepared by Contractor or its subcontractors in connection with services to be performed under this Agreement, shall become the property of and will be transmitted to Authority. However, Contractor may retain and use copies for reference and as documentation of its experience and capabilities.

## **27. Works for Hire**

If, in connection with services performed under this Agreement, Contractor or its subcontractors create artwork, copy, posters, billboards, photographs, videotapes, audiotapes, systems designs, software, reports, diagrams, surveys, blueprints, source codes or any other original works of authorship, such works of authorship shall be works for hire as defined under Title 17 of the United States Code, and all copyrights in such works are the property of the Authority. If it is ever determined that any works created by Contractor or its subcontractors under this Agreement are not works for hire under U.S. law, Contractor hereby assigns all copyright and other rights in the Authority and agrees to provide any material and execute any documents necessary to effectuate such assignment. With the approval of the Authority, Contractor may retain and use copies of such works for reference and as documentation of its experience and capabilities.

## **28. Audit and Inspection of Records**

Contractor agrees to maintain and make available to the Authority, during regular business hours, accurate books and accounting records relating to its work under this Agreement. Contractor will permit Authority to audit, examine and make excerpts and transcripts from such books and records, and to make audits of all invoices, materials, payrolls, records or personnel and other data related to all other matters covered by this Agreement, whether funded in whole or in part under this Agreement. Contractor shall maintain such data and records in an accessible location and condition for a period of not less than three years after final payment under this Agreement or until after final audit has been resolved, whichever is later. The State of California or any federal agency having an interest in the subject matter of this Agreement shall have the same rights conferred upon Authority by this Section.

## **29. Subcontracting**

Contractor is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by Authority in writing. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. An agreement made in violation of this provision shall confer no rights on any party and shall be null and void.

## **30. Assignment**

The services to be performed by Contractor are personal in character and neither this Agreement nor any duties or obligations hereunder may be assigned or delegated by the Contractor unless first approved by Authority by written instrument executed and approved in the same manner as this Agreement.

## **31. Reserved**

## **32. Earned Income Credit (EIC) Forms**

Administrative Code section 12O requires that employers provide their employees with IRS Form W-5 (The Earned Income Credit Advance Payment Certificate) and the IRS EIC Schedule, as set forth below. Employers can locate these forms at the IRS Office, on the Internet, or anywhere that Federal Tax Forms can be found.

a. Contractor shall provide EIC Forms to each Eligible Employee at each of the following times: (i) within thirty (30) days following the date on which this Agreement becomes effective (unless Contractor has already provided such EIC Forms at least once during the calendar year in which such effective date falls); (ii) promptly after any Eligible Employee is hired by Contractor; and (iii) annually between January 1 and January 31 of each calendar year during the term of this Agreement.

b. Failure to comply with any requirement contained in subparagraph (a) of this Section shall constitute a material breach by Contractor of the terms of this Agreement. If, within thirty (30) days after Contractor receives written notice of such a breach, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of thirty (30) days, Contractor fails to commence efforts to cure within such period or thereafter fails to diligently pursue such cure to completion, the City may pursue any rights or remedies available under this Agreement or under applicable law.

c. Any Subcontract entered into by Contractor shall require the subcontractor to comply, as to the subcontractor's Eligible Employees, with each of the terms of this section.

d. Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Section 12O of the San Francisco Administrative Code.

## **33. Minority/Women/Local Business Utilization; Liquidated Damages**

### **a. Compliance**

Contractor understands and agrees to comply fully with all provisions of Chapter 12D.A ("Minority/Women/ Local Business Utilization Ordinance--IV") of the San Francisco

Administrative Code and agrees to include this paragraph in all subcontracts made in fulfillment of the Contractor's obligations under this Agreement. Said provisions are incorporated herein by reference and made a part of this Agreement as though fully set forth. Contractor's willful failure to comply with Chapter 12D.A is a material breach of contract.

**b. Enforcement**

If Contractor willfully fails to comply with any of the provisions of Chapter 12D.A, the rules and regulations implementing Chapter 12D.A, or the provisions of this Agreement pertaining to MBE or WBE participation, Contractor shall be liable for liquidated damages in an amount equal to Contractor's net profit on this Agreement, or ten percent (10%) of the total amount of this Agreement, or one thousand dollars (\$1,000), whichever is greatest. The Director of the City's Human Rights Commission (HRC) may also impose other sanctions against Contractor authorized in Chapter 12D.A, including declaring the Contractor to be irresponsible and ineligible to contract with the City for a period of up to five years or revocation of the Contractor's MBE or WBE certification. The Director of HRC will determine the sanctions to be imposed, including the amount of liquidated damages, after investigation pursuant to §12D.A.16C.

By entering into this Agreement, Contractor acknowledges and agrees that any liquidated damages assessed by the Director of the HRC shall be payable to City upon demand. Contractor further acknowledges and agrees that any liquidated damages assessed may be withheld from any monies due to Contractor on any contract with City.

Contractor agrees to maintain records necessary for monitoring its compliance with Chapter 12D.A for a period of three years following termination of this contract.

**34. Nondiscrimination; Penalties**

**a. Contractor Shall Not Discriminate**

In the performance of this Agreement, Contractor agrees not to discriminate on the basis of the fact or perception of a person's race, color, creed, religion, national origin, ancestry, age, height, weight, sex, sexual orientation, gender identity, domestic partner status, marital status, disability or Acquired Immune Deficiency Syndrome or HIV status (AIDS/HIV status) against any employee of, any Authority or City employee working with, or applicant for employment with Contractor, in any of Contractor's operations within the United States, or against any person seeking accommodations, advantages, facilities, privileges, services, or membership in all business, social, or other establishments or organizations operated by Contractor.

**b. Subcontracts**

Contractor shall incorporate by reference in all subcontracts the provisions of §§12B.2(a), 12B.2(c)-(k), and 12C.3 of the S.F. Administrative Code (copies of which are available from Purchasing) and shall require all subcontractors to comply with such provisions. Contractor's failure to comply with the obligations in this subsection shall constitute a material breach of this Agreement.

**c. Nondiscrimination in Benefits**

Contractor does not as of the date of this Agreement and will not during the term of this Agreement, in any of its operations in San Francisco, on real property owned by San Francisco, or where work is being performed for the Authority elsewhere in the United States, discriminate in the provision of bereavement leave, family medical leave, health benefits, membership or membership discounts, moving expenses, pension and retirement benefits or travel benefits, as well as any benefits other than the benefits specified above, between employees with domestic partners and employees with spouses, and/or between the domestic partners and spouses of such employees, where the domestic partnership has been registered with a governmental entity pursuant to state or local law authorizing such registration, subject to the conditions set forth in §12B.2(b) of the S.F. Administrative Code.

**d. Condition to Contract**

As a condition to this Agreement, Contractor shall execute the "Chapter 12B Declaration: Nondiscrimination in Contracts and Benefits" form (form HRC-12B-101) with supporting documentation and secure the approval of the form by the San Francisco Human Rights Commission.

**e. Incorporation of Administrative Code Provisions by Reference**

The provisions of Chapters 12B and 12C of the S.F. Administrative Code are incorporated in this Section by reference and made a part of this Agreement as though fully set forth herein. Contractor shall comply fully with and be bound by all of the provisions that apply to this Agreement under such Chapters, including but not limited to the remedies provided in such Chapters. Without limiting the foregoing, Contractor understands that pursuant to §12B.2(h) of the S.F. Administrative Code, a penalty of \$50 for each person for each calendar day during which such person was discriminated against in violation of the provisions of this Agreement may be assessed against Contractor and/or deducted from any payments due Contractor.

**35. MacBride Principles—Northern Ireland**

Pursuant to S.F. Administrative Code §12.F.5, the City and County of San Francisco urges companies doing business in Northern Ireland to move towards resolving employment inequities, and encourages such companies to abide by the MacBride Principles. The City and County of San Francisco urges San Francisco companies to do business with corporations that abide by the MacBride Principles. By signing below, the person executing this agreement on behalf of Contractor acknowledges and agrees that he or she has read and understood this section.

**36. Tropical Hardwood and Virgin Redwood Ban**

Pursuant to S.F. Administrative Code §12I.5(b), the City and County of San Francisco urges contractors not to import, purchase, obtain, or use for any purpose, any tropical hardwood, tropical hardwood wood product, virgin redwood or virgin redwood wood product.

**37. Drug-Free Workplace Policy**

Contractor acknowledges that pursuant to the Federal Drug-Free Workplace Act of 1989, the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited on City premises. Contractor agrees that any violation of this prohibition by Contractor, its employees, agents or assigns will be deemed a material breach of this Agreement.



### **38. Resource Conservation; Liquidated Damages**

Chapter 21A of the S.F. Administrative Code ("Resource Conservation") is incorporated herein by reference. Failure by Contractor to comply with any of the applicable requirements of Chapter 21A will be deemed a material breach of contract.

In the event Contractor fails to comply in good faith with any of the provisions of Chapter 21A, Contractor will be liable for liquidated damages in an amount equal to Contractor's net profit under this Agreement, or five percent (5%) of the total contract amount, whichever is greater. Contractor acknowledges and agrees that the liquidated damages assessed shall be payable to City upon demand and may be offset against any monies due to Contractor from any contract with City.

### **39. Compliance with Americans with Disabilities Act**

Contractor acknowledges that, pursuant to the Americans with Disabilities Act (ADA), programs, services and other activities provided by a public entity to the public, whether directly or through a contractor, must be accessible to the disabled public. Contractor shall provide the services specified in this Agreement in a manner that complies with the ADA and any and all other applicable federal, state and local disability rights legislation. Contractor agrees not to discriminate against disabled persons in the provision of services, benefits or activities provided under this Agreement and further agrees that any violation of this prohibition on the part of Contractor, its employees, agents or assigns will constitute a material breach of this Agreement.

### **40. Sunshine Ordinance**

In accordance with S.F. Administrative Code §67.24(e), contracts, contractors' bids, responses to solicitations and all other records of communications between City and persons or firms seeking contracts, shall be open to inspection immediately after a contract has been awarded. Nothing in this provision requires the disclosure of a private person's or organization's net worth or other proprietary financial data submitted for qualification for a contract or other benefit until and unless that person or organization is awarded the contract or benefit. Information provided which is covered by this paragraph will be made available to the public upon request.

### **41. Public Access to Meetings and Records**

If the Contractor receives a cumulative total per year of at least \$250,000 in City funds or City-administered funds and is a non-profit organization as defined in Chapter 12L of the S.F. Administrative Code, Contractor shall comply with and be bound by all the applicable provisions of that Chapter. By executing this Agreement, the Contractor agrees to open its meetings and records to the public in the manner set forth in §§12L.4 and 12L.5 of the Administrative Code. Contractor further agrees to make-good faith efforts to promote community membership on its Board of Directors in the manner set forth in §12L.6 of the Administrative Code. The Contractor acknowledges that its material failure to comply with any of the provisions of this paragraph shall constitute a material breach of this Agreement. The Contractor further acknowledges that

such material breach of the Agreement shall be grounds for the City to terminate and/or not renew the Agreement, partially or in its entirety.

#### **42. Requiring Minimum Compensation for Employees**

Contractor agrees to comply fully with and be bound by all of the provisions of the Minimum Compensation Ordinance (MCO), as set forth in San Francisco Administrative Code Chapter 12P (Chapter 12P), including the remedies provided, and implementing guidelines and rules. The provisions of Chapter 12P are incorporated herein by reference and made a part of this Agreement as though fully set forth. The text of the MCO is available on the web at [www.ci.sf.ca.us\MCO](http://www.ci.sf.ca.us\MCO). Capitalized terms used in this Section and not defined in this Agreement shall have the meanings assigned to such terms in Chapter 12P. Consistent with the requirements of the MCO, Contractor agrees to all of the following:

(a) For each hour worked by a Covered Employee during a Pay Period on work funded under the Authority contract during the term of this Agreement, Contractor shall provide to the Covered Employee no less than the Minimum Compensation, which includes a minimum hourly wage and compensated and uncompensated time off consistent with the requirements of the MCO. For the hourly gross compensation portion of the MCO, the Contractor shall pay \$9.00 an hour through December 31, 2001. On January 1, 2002, Contractor shall increase the hourly gross compensation to \$10.00 an hour; provided, however, that if Contractor is a Nonprofit Corporation or a public entity, it shall be required to pay the increased amount only if the City makes the finding required by Section 12P.3(a)(ii) of the San Francisco Administrative Code. If Contractor is required to increase the gross hourly compensation to \$10.00 an hour, it shall provide the 2.5% annual increase required by the MCO for each of the next three years.

(b) Contractor shall not discharge, reduce in compensation, or otherwise discriminate against any employee for complaining to the Authority with regard to Contractor's compliance or anticipated compliance with the requirements of the MCO, for opposing any practice proscribed by the MCO, for participating in proceedings related to the MCO, or for seeking to assert or enforce any rights under the MCO by any lawful means.

(c) Contractor understands and agrees that the failure to comply with the requirements of the MCO shall constitute a material breach by Contractor of the terms of this Agreement. The City, acting through the Authority, shall determine whether such a breach has occurred.

(d) If, within 30 days after receiving written notice of a breach of this Agreement for violating the MCO, Contractor fails to cure such breach or, if such breach cannot reasonably be cured within such period of 30 days, Contractor fails to commence efforts to cure within such period, or thereafter fails diligently to pursue such cure to completion, the City, acting through the Authority, shall have the right to pursue the following rights or remedies and any rights or remedies available under applicable law:

(1) The right to charge Contractor an amount equal to the difference between the Minimum Compensation and any compensation actually provided to a Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law;



- (2) The right to set off all or any portion of the amount described in Subsection (d)(1) of this Section against amounts due to Contractor under this Agreement;
- (3) The right to terminate this Agreement in whole or in part;
- (4) In the event of a breach by Contractor of the covenant referred to in Subsection (b) of this Section, the right to seek reinstatement of the employee or to obtain other appropriate equitable relief; and
- (5) The right to bar Contractor from entering into future contracts with the City for three (3) years.

Each of the rights provided in this Subsection (d) shall be exercisable individually or in combination with any other rights or remedies available to the City. Any amounts realized by the City pursuant to this subsection shall be paid to the Covered Employee who failed to receive the required Minimum Compensation.

(e) Contractor represents and warrants that it is not an entity that was set up, or is being used, for the purpose of evading the intent of the MCO.

(f) Contractor shall keep itself informed of the current requirements of the MCO, including increases to the hourly gross compensation due Covered Employees under the MCO, and shall provide prompt written notice to all Covered Employees of any increases in compensation, as well as any written communications received by the Contractor from the CITY, which communications are marked to indicate that they are to be distributed to Covered Employees.

(g) Contractor shall provide reports to the Authority in accordance with any reporting standards promulgated by the City under the MCO, including reports on subcontractors.

(h) The Contractor shall provide the Authority with access to pertinent records after receiving a written request from the Authority to do so and being provided at least five (5) business days to respond.

(i) The Authority may conduct random audits of Contractor. Random audits shall be (i) noticed in advance in writing; (ii) limited to ascertaining whether Covered Employees are paid at least the minimum compensation required by the MCO; (iii) accomplished through an examination of pertinent records at a mutually agreed upon time and location within ten (10) days of the written notice; and (iv) limited to one audit of Contractor every two years for the duration of this Agreement. Nothing in this Agreement is intended to preclude the Authority from investigating any report of an alleged violation of the MCO.

(j) Any subcontract entered into by Contractor shall require the subcontractor to comply with the requirements of the MCO and shall contain contractual obligations substantially the same as those set forth in this Section. A subcontract means an agreement between the Contractor and a third party which requires the third party to perform all or a portion of the services covered by this Agreement. Contractor shall notify the Department of Administrative Services when it enters into such a subcontract and shall certify to the Department of

Administrative Services that it has notified the subcontractor of the obligations under the MCO and has imposed the requirements of the MCO on the subcontractor through the provisions of the subcontract. It is Contractor's obligation to ensure that any subcontractors of any tier under this Agreement comply with the requirements of the MCO. If any subcontractor under this Agreement fails to comply, Authority may pursue any of the remedies set forth in this Section against Contractor.

(k) Each Covered Employee is a third-party beneficiary with respect to the requirements of subsections (a) and (b) of this Section, and may pursue the following remedies in the event of a breach by Contractor of subsections (a) and (b), but only after the Covered Employee has provided the notice, participated in the administrative review hearing, and waited the 21-day period required by the MCO. Contractor understands and agrees that if the Covered Employee prevails in such action, the Covered Employee may be awarded: (1) an amount equal to the difference between the Minimum Compensation and any compensation actually provided to the Covered Employee, together with interest on such amount from the date payment was due at the maximum rate then permitted by law; (2) in the event of a breach by Contractor of subsections (a) or (b), the right to seek reinstatement or to obtain other appropriate equitable relief; and (3) in the event that the Covered Employee is the prevailing party in any legal action or proceeding against Contractor arising from this Agreement, the right to obtain all costs and expenses, including reasonable attorney's fees and disbursements, incurred by the Covered Employee. Contractor also understands that the MCO provides that if Contractor prevails in any such action, Contractor may be awarded costs and expenses, including reasonable attorney's fees and disbursements, from the Covered Employee if the court determines that the Covered Employee's action was frivolous, vexatious or otherwise an act of bad faith.

(l) If Contractor is exempt from the MCO when this Agreement is executed because the cumulative amount of agreements with this department for the fiscal year is less than \$25,000 (\$50,000 for nonprofits), but Contractor later enters into an agreement or agreements that cause contractor to exceed that amount in a fiscal year, Contractor shall thereafter be required to comply with the MCO under this Agreement. This obligation arises on the effective date of the agreement that causes the cumulative amount of agreements between the Contractor and this department to exceed \$25,000 (\$50,000 for nonprofits) in the fiscal year.

#### **43. Non-Waiver of Rights**

The omission by either party at any time to enforce any default or right reserved to it, or to require performance of any of the terms, covenants, or provisions hereof by the other party at the time designated, shall not be a waiver of any such default or right to which the party is entitled, nor shall it in any way affect the right of the party to enforce such provisions thereafter.

#### **44. Modification of Agreement**

This Agreement may not be modified, nor may compliance with any of its terms be waived, except by written instrument executed and approved in the same manner as this Agreement. Contractor shall cooperate with Authority to submit to the Director of HRC any amendment, modification, supplement or change order that would result in a cumulative increase of the original amount of this Agreement by more than twenty percent (20%).

#### **45. Administrative Remedy for Agreement Interpretation**

Should any question arise as to the meaning and intent of this Agreement, the question shall, prior to any other action or resort to any other legal remedy, be referred to the City's Purchasing who shall decide the true meaning and intent of the Agreement.

#### **46. Agreement Made in California; Venue**

The formation, interpretation and performance of this Agreement shall be governed by the laws of the State of California. Venue for all litigation relative to the formation, interpretation and performance of this Agreement shall be in San Francisco.

#### **47. Construction**

All paragraph captions are for reference only and shall not be considered in construing this Agreement.

#### **48. Entire Agreement**

This contract sets forth the entire Agreement between the parties, and supersedes all other oral or written provisions. This contract may be modified only as provided in Section 44.

#### **49. Compliance with Laws**

Contractor shall keep itself fully informed of the City's Charter, codes, ordinances and regulations of the City and of all state, and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with such local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time.

#### **50. Severability**

Should the application of any provision of this Agreement to any particular facts or circumstances be found by a court of competent jurisdiction to be invalid or unenforceable, then (a) the validity of other provisions of this Agreement shall not be affected or impaired thereby, and (b) such provision shall be enforced to the maximum extent possible so as to effect the intent of the parties and shall be reformed without further action by the parties to the extent necessary to make such provision valid and enforceable.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day first mentioned above.

#### AUTHORITY

Recommended by:

\_\_\_\_\_  
Annemarie Conroy, Executive Director  
Treasure Island Development Authority

Approved as to Form:

Louise H. Renne  
City Attorney

By \_\_\_\_\_  
Deputy City Attorney

Approved:

\_\_\_\_\_  
Director of Purchasing

#### CONTRACTOR

By signing this Agreement, I certify that I comply with the requirements of the Minimum Compensation Ordinance, which entitle Covered Employees to certain minimum hourly wages and compensated and uncompensated time off.

I have read and understood paragraph 35, the City's statement urging companies doing business in Northern Ireland to move towards resolving employment inequities, encouraging compliance with the MacBride Principles, and urging San Francisco companies to do business with corporations that abide by the MacBride Principles.

\_\_\_\_\_  
Rick Aubry, President  
Rubicon Enterprises, Inc.  
2500 Bissell Avenue  
Richmond CA 94804  
Federal Tax ID 69-035815

## APPENDIX A: SCOPE OF SERVICES

Rubicon Enterprises, Inc. ("Contractor") shall provide all labor, materials, and equipment necessary to perform groundskeeping and landscape maintenance services on Base parcels as identified in Exhibit 1, "Map of Treasure Island," and Exhibit 2, "Map of Yerba Buena Island." Each parcel identified in Exhibits 1 and 2 shall be maintained to Level of Service 1, 2, or 3 as described in Exhibit 3, "Landscape Maintenance Specifications for Treasure Island and Yerba Buena Island." These specifications describe the scope of work for each of the three levels of service. In fulfilling the terms of this Agreement, Contractor shall follow the City and County of San Francisco's Integrated Pest Management Program.

In performing its rights and responsibilities under this Agreement, Contractor shall comply with the workforce hiring goals for qualified homeless or otherwise economically disadvantaged persons and San Francisco residents, as provided in Addendum 1 to this Appendix A.

The following parcels are designated for Level of Service 1:

Parcel/Parcel Number

1  
1A  
2  
3  
13  
15  
24  
Quarters 61

The following parcels are designated for Level of Service 2:

Parcel/Parcel Number

5  
10  
14  
16  
Quarters 1  
Quarters 2 – 7

The following parcels are designated for Level of Service 3:

Parcel Number

Below 1-7  
4  
6  
6B  
7  
8  
12  
17  
18  
18B  
19  
22

23  
25  
27

Adjunct Areas for Routine Maintenance Services

- Item 1 Firebreaks
- Item 2 Seawall (outer)
- Item 3 Seawall (inner)
- Item 4 Garbage & Tourist Stop
- Item 5 Garbage Cans on Treasure Island
- Item 6 Poison Oak
- Item 7 Annual Planting and Maintenance
- Item 8 Disease and Insect Treatments
- Item 9 Storm Damage Clean up

Adjunct Work Items

- Item 10 Reservoir Maintenance
- Item 11 Pump Station Maintenance
- Item 12 Parcel 21
- Item 13 Parcel 21A
- Item 14 Parcel 27A

## ADDENDUM 1 TO APPENDIX A

### 1. WORKFORCE HIRING GOALS

In performing its rights and responsibilities under this Agreement, Contractor shall comply with the following workforce hiring goals for qualified homeless or otherwise economically disadvantaged persons and San Francisco residents.

**1.1 Contractor's Workforce Hiring Goals.** Contractor shall use Good faith Efforts to meet the work force hiring goals described herein (the "Workforce Goals"). For purposes of this Section 1, Contractor's Good Faith Efforts shall include, but not be limited to, the following:

(a) Submitting detailed written plans describing how Contractor intends to meet the Workforce Goals (a "Hiring Plan").

(b) Listing jobs available on the Premises with the TIHDI Job Broker at least two weeks prior to advertising for applicants elsewhere;

(c) Considering for appropriate job openings all candidates who are qualified, screened and referred to it by the TIHDI Job Broker;

(d) Establishing with TIHDI mutually acceptable means of communicating about job openings and provide information about jobs and about outcomes of referrals within a reasonable time upon request by the TIHDI Job Broker;

(e) Consulting with the TIHDI Job Broker on an ongoing basis about how to meet Contractor's Workforce Goals; and

(f) Meeting and conferring with the TIHDI Job Broker to discuss and attempt to resolve any problems with Contractor meeting its Workforce Goals.

**1.2 Burden of Proof.** If the Workforce Goals are not met, Contractor shall have the burden of establishing in any Enforcement Procedure described in Section 1.9 below that it made Good Faith Efforts and that the candidates who were selected were better qualified for work than the homeless or economically disadvantages persons who applied or were referred by the TIHDI Job Broker.

**1.3 Construction Workforce.** Without obligation (other than as expressly set forth herein), Contractor shall also be required to give consideration for hiring on all construction projects on the Premises to qualified homeless or otherwise economically disadvantaged persons, and to qualified residents of San Francisco whose annual income, at the time of hire, is at or below fifty percent (50%) of median income for the City as determined by HUD.

**1.4 Subcontracting.** Contractor will consider subcontracting certain tasks to be performed by Contractor under this Agreement to TIHDI member organizations, particularly for grounds keeping, janitorial, recycling and deconstruction activities. Subcontracts with TIHDI organizations will be included for purposes of determining Contractor's Good Faith Efforts to meet the Work Force Goals.

## **1.5 Hiring Plan.**

(a) Contractor shall submit its Hiring Plan to the Authority within sixty (60) days of the Commencement Date. Contractor's Hiring Plan shall include a detailed description of how Contractor intends to meet its Workforce Goals, which description should include community outreach and recruiting efforts, hiring procedures (e.g., phased hiring), a projected schedule for meeting the Workforce Goals, and alternative courses of action if it appears that the Workforce Goals will not be met.

(b) During the first 30 days after the Hiring Plan is submitted, the Authority and Contractor shall negotiate in good faith solutions to any deficiencies in the Hiring Plan as reasonably determined by the Authority. At the expiration of such 30-day period, the Authority shall advise Contractor, through a written "Notice of Noncompliance," of any alleged deficiency in the Hiring Plan remaining at the close of such negotiations. The Notice of Noncompliance shall state the specific basis for the alleged deficiency(ies) and the Authority's suggested cure. Contractor shall advise the Authority within 10 days of its receipt of the Notice of Noncompliance whether Contractor accepts the suggested cure. If the Contractor rejects the suggested cure, either party may proceed immediately to the Enforcement Procedure pursuant to Section 1.9 below by filing a Request for Enforcement ("Request") on the Hiring Plan. The Request shall specify the issues presented and the relief requested.

**1.6 Reports.** Contractor shall prepare reports regarding the composition of Contractor's work force reasonably satisfactory to the Authority.

**1.7 Matters Subject to Enforcement Procedure.** In addition to the initial preparation of the Hiring Plan, all matters related to implementing the Hiring Plan and the Workforce Goals are subject to the Enforcement Procedure described in Section 1.9 below.

**1.8 Implementation of Enforcement Procedure.** The Enforcement Procedure, as provided for in Section 1.9 below, shall be the exclusive procedure for resolving any dispute concerning the interpretation or implementation of the Hiring Plan or any alleged deficiency in Contractor's Good Faith Efforts to achieve the Workforce Goals. The Enforcement Procedure shall be implemented by the Human Rights Commission of the City of County of San Francisco (the "Commission"), which shall have the powers described below unless otherwise provided by law.

(a) All subcontracts related to the Agreement ("Subcontracts") shall incorporate the provisions of this Section 1 and the Authority shall have the right to enforce said obligations, requirements and agreements against the Contractor or its subcontractors. Contractor shall require, by contract, that each subcontractor participates in Enforcement Procedure proceedings in which it may be identified in a Request, and that each subcontractor shall be bound by the outcome of such Enforcement Procedure according to the decision of the Commission.

## **1.9 Enforcement Procedure.**

(a) If the Authority reasonably determines that Contractor has failed to use Good Faith Efforts to meet the Workforce Goals, or for any other matter subject to this Enforcement Procedure the Authority shall send a written Notice of Noncompliance to Contractor describing the basis for its determination and suggesting a means to cure any



deficiencies. If Contractor does not, in the reasonable discretion of the Authority, cure the deficiency within ten (10) days, the matter shall be submitted to the following Enforcement Procedure.

(i) Prior to the filing and service of a Request, the parties to any dispute shall meet and confer in an attempt to resolve the dispute.

(ii) The Authority, Contractor or any subcontractor may commence resolution of any dispute covered by the Enforcement Procedure by filing a Request with the Commission. Where the Authority is not the complaining party, the Request shall be served on the Contractor at the Notice Address listed in the Agreement, and the non-compliant subcontractor, if any, if such service can be achieved with reasonable effort. The Request shall be filed and served either by hand delivery or by registered or certified mail. The Request shall identify the entities involved in the dispute and state the exact nature of the dispute and the relief sought. If the complaining party seeks a temporary restraining order and/or a preliminary injunction, the Request shall so state in the caption of the Request.

(iii) Service on the Contractor of the Request or any notice provided for by this Section 1 shall constitute service of the Request or notice on all subcontractors who are identified as being in alleged noncompliance in the Request. The Contractor shall promptly serve the Request or notice, by hand delivery or registered or certified mail, on all such subcontractors.

(iv) The TIHDI Job Broker shall have the right to present testimony or documentary evidence at Enforcement Procedure proceedings.

(v) After the filing and the service of a Request, the parties shall negotiate in good faith for a period of 10 business days in an attempt to resolve the dispute; provided that the complaining party may proceed immediately to the Enforcement Procedure, without engaging in such a conference or negotiations, if the facts could reasonably be construed to support the issuance of a temporary restraining order or a preliminary injunction ("Temporary Relief"). The Commission shall determine whether the facts reasonably supported the issuance of Temporary Relief.

(vi) If the dispute is not settled within 10 business days, a hearing shall be held within 90 days of the date of the filing of the Request, unless otherwise agreed by the parties or ordered by the Commission upon a showing of good cause; provided, that if the complaining party seeks a temporary restraining order, the hearing on the motion for a temporary restraining order shall be heard not later than two (2) business days after the filing of the Request, and provided further, if a party seeks a preliminary injunction, such motion shall be heard on 15 days' notice. The Commission shall set the date, time and place for the Enforcement Procedure hearing(s) within the proscribed time periods by giving notice by hand delivery to the Authority and the Contractor; except, where a temporary restraining order is sought, the Commission may give notice of the hearing date, time and place to the Authority, Contractor and any affected subcontractor by telephone.

(vii) In the Enforcement Procedure proceedings hereunder, discovery shall be permitted in accordance with Code of Civil Procedure §1283.05.

**(b) Commission's Decision.** The Commission shall render a decision within 20 days of the date that the hearing on a Request is completed; provided that where a temporary restraining order is sought, the Commission shall render a decision not later than 24 hours after the hearing on the motion. The Commission shall send the decision by certified or registered mail to the Authority, the Contractor and the subcontractor, if any.

(i) The Commission may enter a default award against any party who fails to appear at the hearing; provided said party received actual notice of the hearing. In a proceeding seeking a default award against a party other than the Contractor, the Contractor shall provide proof of service on the party as required by this Article. If the Contractor fails to provide proof of service, the Contractor shall pay \$2,500 as liquidated damages to the Authority, provided that no such damages shall be assessed if the Contractor demonstrates that it made good faith efforts to serve the party. In order to obtain a default award, the complaining party need not first seek or obtain an order to arbitrate the controversy pursuant to Code of Civil Procedure §1281.2.

(ii) Except as otherwise provided in this Section 1, the Commission shall have no power to add to, subtract from, disregard, modify or otherwise alter the terms of the Agreement, or to negotiate new agreements or provisions between the parties.

(iii) The inquiry of the Commission shall be restricted to the particular controversy that gave rise to the request for the Enforcement Procedure. A decision of the Commission issued hereunder shall be final and binding upon the Authority, Contractor, and subcontractors, if any, sent by mail to the Authority, the Contractor and the subcontractor, if any. The losing party shall pay the Commission's fees and related costs of the Enforcement Procedure. If a subcontractor is the losing party and fails to pay said fees within 30 days of the decision, the Contractor shall pay the fees. Each party shall pay its own attorneys' fees provided that fees may be awarded to the prevailing party if the Commission finds that the Request was frivolous or that the Enforcement Procedure action was otherwise instituted or litigated in bad faith. Judgment upon the Commission's decision may be entered in any court of competent jurisdiction.

**(c) Remedies and Sanctions.** Except as may otherwise be expressly provided herein, the Commission may impose only the remedies and sanctions set forth below and only against the non-compliant party(ies):

(i) Order specific, reasonable actions and procedures, in the form of a temporary restraining order, preliminary injunction or permanent injunction, to mitigate the effects of the Contractor's failure to make Good Faith Efforts, and/or to require Contractor and/or its subcontractors to make such Good Faith Efforts, including, but not limited to, orders enjoining the Contractor from recruiting, screening or hiring (through new hires, transfers or otherwise) any person for employment at the Premises pending resolution of the alleged deficiency(ies) in the Hiring Plan or Contractor's implementation of the Workforce Goals.

(ii) Require the Contractor or Subcontractors to refrain from entering into new contracts related to work related to the Agreement, or from granting extensions or other modifications to existing contracts related to the Agreement, other than those minor modifications or extensions necessary to enable completion of the work covered by the existing contract, with any non-compliant subcontractor until such subcontractor

provides assurances satisfactory to the Authority and the Contractor of future Good Faith Efforts to comply with the Workforce Goals.

(iii) Direct the Contractor or subcontractor to cancel, terminate, suspend or cause to be canceled, terminated or suspended, any contract or lease or portion(s) thereof for failure of the subcontractor to make Good Faith Efforts to comply with the Workforce Goals, provided, however that Subcontracts may be continued upon the condition that a program for future compliance is approved by the Authority.

(iv) If the Contractor or subcontractor is found to be in willful breach of its obligations to make Good Faith Efforts to achieve the Workforce Goals, impose financial penalties not to exceed \$50,000 or 10 percent of the total monetary consideration contemplated by the Agreement, whichever is less, for each such breach on the party responsible for the willful breach; provided, however, no penalty shall be imposed pursuant to this paragraph for the first willful breach unless the breaching party has failed to cure after being provided notice and a reasonable opportunity to cure. The Contractor or subcontractor may impose penalties for subsequent willful breaches whether or not the breach is subsequently cured. For purposes of this paragraph, "willful breach" means a knowing and intentional breach.

(v) Direct that the Contractor or subcontractor produce and provide to the Authority any records, data or reports that are necessary to determine if a violation has occurred and/or to monitor the performance of the Contractor or Subcontractor.

(vi) Issue such other relief deemed necessary to ensure that the Hiring Plan is written and implemented, and that Contractor makes Good Faith Efforts to meet its Workforce Goals, including requiring the inclusion or exclusion of specific terms or provisions in the Hiring Plan based on a determination that the term(s) added or removed further the requirements and objectives of this Section 1.

(d) Delays due to enforcement. If Contractor does not timely perform its obligations under the Agreement with the Authority because of a Commission's order against a party other than the Contractor, such order shall be deemed an event of Force Majeure, and the time for any performance by the Contractor shall be extended as provided therein; provided, however, that Contractor shall make good faith efforts to minimize any delays.

(e) Exculpatory clause. The Contractor and its subcontractors hereby forever waive and release any and all claims against the Authority for Losses arising under or related to this Section 1.

(f) California law applies. California law, including the California Arbitration Act, Code of Civil Procedure §§1280 through 1294.2, shall govern all the Enforcement Procedure proceedings.

(g) Designation of agent for service. Not later than five (5) days after the execution of this Agreement, the Contractor shall designate a person or business, residing or located in the City and County of San Francisco, as its agent for service of a Request and all notices provided for herein. If the Contractor has an office located in San Francisco, it may designate itself as agent for service. The designation shall be served on

**1.10. Relationship to Other Employment Agreements.** Nothing in this Agreement shall be interpreted to prohibit the continuation of existing workforce-training agreements or interfere with consent decrees, collective bargaining agreements or existing employment contracts. In the case of collective bargaining agreements, Contractor will take primary responsibility for integrating the requirements of Contractor's Workforce Goals with any such collective bargaining agreements. As necessary, Contractor will attempt to negotiate equivalent first source hiring obligations with relevant unions.

## **APPENDIX B PROJECT BUDGET**

The total amount payable under this Agreement shall not exceed seven hundred eighty thousand dollars (\$780,000). The annual budget for each parcel identified in Exhibits 1 and 2 and at the Level of Service identified in Appendix A, "Scope of Services" is stated below:

The following parcels are designated for Level  
of Service 1:

Parcel/Parcel Number	
1	\$30,855
1A	\$7,524
2	\$19,107
3	\$7,870
13	\$48,775
15	\$116,704
24	\$8,176
Quarters 61	\$3,029
Subtotal Level 1 Services	\$242,040

The following parcels are designated for Level  
of Service 2:

Parcel/Parcel Number	
Quarters 1	\$6,020
Quarters 2-7	\$15,493
5	\$4,327
10	\$24,767
14	\$27,502
16	\$18,110
Subtotal Budget Level 2 Services	\$96,219

The following are designated for  
Level of Service 3:

Parcel/Parcel Below	
1-7	\$3,376
4	\$1,296
6	\$7,803
6B	\$3,652
7	\$17,933
8	\$13,265
12	\$5,112
17	\$3,545
18	\$1,701
18B	\$4,617
19	\$8,973
22	\$1,909
23	4,362
25	\$2,019
27	\$1,913
Subtotal Budget Level 2 Services	\$81,476

#### ROUTINE ADJUNCT WORK ITEMS

Item	Description
1	Firebreaks

2	Sea Wall (outer)	
3	Sea Wall (inner)	
4	Garbage & Tourist Stop	\$40,233
5	Garbage Cans on TI	\$11,063
6	Poison Oak	\$5,531
7	Annual Planting/Maintenance	\$12,359
8	Disease & Insect Control	\$3,215
9	Storm Damage Clean-up	\$1,337
Subtotal Routine Adjunct Work Items		\$20,559
		\$1,675
SPECIAL ADJUNCT WORK ITEMS		\$26,794
10	Reservoir Maintenance	\$122,766
11	Pump Station Maintenance	
12	Parcel 21	
13	Parcel 21A	
14	Parcel 27A	\$16,712
Subtotal Special Adjunct Work Items		\$4,387
1		\$11,308
		\$17,169
		\$7,341
		\$179,683

## EXHIBIT 3: LANDSCAPE MAINTENANCE SPECIFICATIONS FOR TREASURE ISLAND AND YERBA BUENA ISLAND

### Level 1 Services

**Turf Grass Mowing and Associated Cleanup:** All turf areas shall be maintained in a manner that promotes proper turf health and a neat and attractive appearance. Turf grass areas shall be mowed once per week throughout the growing season, and then twice per month from November 15 through March 1<sup>st</sup>. Turf grass height shall be maintained between 2 inches and 3.5 inches at all times. Mower blades shall be sharp and provide a clean and even cut. Prior to mowing, all trash, papers and other debris shall be removed from turf areas. Surface imperfections such as gopher mounds shall be leveled out. Rubicon shall repair and or replace all items damaged as a result of any Rubicon mowing operation. All edges along curbs, sidewalks, roadways, other paved areas, and around light poles, hydrants, light guards, and signs shall be trimmed once per week. Tree wells shall be maintained around all trees and large shrubs growing in turf areas. A weed control program shall be implemented to achieve turf areas free of broadleaf weeds and other targeted weeds. Rubicon shall recycle and reuse waste plant material to the greatest extent possible.

**Annual & Perennial Color Plants:** Annual color shall be planted in specified areas as directed by the Mayor's Treasure Island Office Contracting Officer (hereinafter called the "Facilities Manager"). Planting shall occur three times per year on September 30<sup>th</sup>, March 15<sup>th</sup>, and June 30<sup>th</sup>. Plant beds shall be maintained at all times to insure good plant health and appearance. Planting beds shall be dressed with fine, uniform organic compost. It is estimated that 1,500 flats of annuals (500 flats per planting session) and some perennials will be required. Once planting areas have been designated, Rubicon shall present to the Facilities Manager a schedule that includes the number and types of plants to be used for each planting session and the design patterns that will be achieved.

**Trees and Shrubs:** Trees and shrubs shall be pruned as required to encourage proper health, to maintain a pleasing appearance and to prevent interference with pedestrian and vehicular traffic. Trees and shrubs shall be treated as required to prevent disease, fungus and insect damage. Trees shall be pruned to keep their canopies from extending into pathways. All tree pruning shall be limited to heights under twelve (12') feet. Pruning shall be performed to:

- Prevent growth in front of windows, over entranceways and walkways, and in locations where visibility at street intersections would be obstructed.
- Remove dead, diseased or damaged growth.
- Evenly form or balance trees and shrubs to maintain their established shape and appearance. Informal hedges or screen plantings shall not be converted to formal shapes.
- Remove tree branches up to eight (8") inches in diameter and within twelve (12') feet of the ground if such branches extend over pathways or roads.
- Extensive pruning and "cut back" activities shall be accomplished in the winter to give trees and shrubs sufficient time to recover before the growing season.
- Ivy and ground cover shall be kept to a minimum of eight (8") inches from shrubs and trees.
- Shrub beds shall be kept free of weeds, debris, sucker growth, and dead plant material.



- A three (3") inch layer of mulch of uniform size with even appearance (with nothing over 3" in size) will be installed over bare soil in shrub areas to discourage weeds and improve soil.

Treatment of any abnormal or excessively large infestation of insects or disease organisms that could cause extensive damage to individual mature trees, or to a great number of trees, shall be performed as directed in a timely manner, but only at an additional cost.

**Fertilization, Weed Control, Fungicide and Insecticides:** Fertilizer shall be applied up to four times per year as required to promote the proper health and appearance of turf, trees, shrubs, groundcover and color areas. A complete fertilizer with an analysis of 16-6-8 shall be applied at a rate of 275 pounds per acre per application. Chem-Lawn or other commercial liquid fertilizer applications are not acceptable. Herbicides, fungicides, insecticides, and lime shall be applied as necessary to maintain superior plant health and appearance and in accord with the City and County of San Francisco's Pest Management Program.

**Irrigation:** Irrigation shall be performed in a manner that promotes proper plant health and growth. Irrigation shall include watering of lawns, shrubs, trees, planting beds, ground cover, and containerized plants. Rubicon shall provide back-flow prevention devices approved by the San Francisco Department of Public Works on all hoses used for watering, and on all connections made to fire hydrants.

At the Facilities manager's sole discretion, Rubicon shall be responsible for replacing or repairing damage caused to fire hydrants through Rubicon's use of any unapproved back-flow devices. Rubicon shall also repair or replace, at the Facilities Manager's sole discretion, damage caused by Rubicon to sprinkler heads, valves, piping, fire hydrants, or any other equipment. Rubicon shall not be responsible for replacing or repairing any irrigation system components that wear out or fail as a result of normal use, unless directed to do so under a separate additional work agreement. The Facilities Manager shall provide water for irrigation and electricity for irrigation controllers, and shall be responsible for maintaining and repairing any underground piping located more than one foot from any sprinkler head.

**Ground Cover:** Ground covers shall be kept free of noticeable weeds and debris. Ground covers shall be trimmed as necessary to maintain boundaries and to keep new growth away from trees, shrubs, utilities, etc.

**Weed control in Paved Areas:** Weeds shall be removed from all asphalt and other paved areas. Herbicides shall be applied to prevent re-growth.

**Policing, Debris Removal and Storm Damage Cleanup:** All maintenance areas shall be policed at least twice per week to remove debris, leaves, paper, dead limbs, bark, pine needles, etc. Debris, silt, and vegetation shall be removed from gutters, curb inlets, and gratings. Debris from storms shall be removed as soon as it is possible to divert workers from normal routines.

**Playgrounds, Sandboxes, Ball fields, and Tennis Courts:** Playgrounds, sandboxes, ball fields, and tennis courts shall be kept free of weeds and debris. Sandboxes shall be raked once a week to remove litter and refuse. Ball fields will be dragged once per month during winter and once per week during playing season.

<u>Level 1 Task</u>	<u>Frequency/Year</u>
Policing	104
Mowing	43
Edging/Trimming	43
Fertilization	as needed
Shrub and Tree Maintenance	as needed
Disease and Insect Control	as needed
Weed Control, Lawns	3 times plus spot spraying as needed
Storm Damage Cleanup	as needed
General Debris Pickup	as needed
Hand Irrigation	72

These frequencies are average projected amounts of service that will be required to provide the standard of maintenance described above. Depending in overall weather patterns and associated plant responses some tasks may be performed more times than shown and others less times than shown.

## **Level 2 Services**

**Turf Grass Mowing and Associated Cleanup:** Turf areas shall be mowed an average of two times per month. Turf grass height shall be maintained between 2 inches and 4 inches at all times. Mower blades shall be sharp and provide a clean and even cut. Mower blades shall be sharp and provide a clean and even cut. Prior to mowing, all trash, papers, and other debris shall be removed from turf areas. Surface imperfections such as gopher mounds shall be leveled out. Rubicon shall repair or replace any items damaged as a result of any Rubicon mowing operation. All edges along curbs, sidewalks, roadways, and other paved areas, and around light poles, hydrants, light guards, and signs shall be trimmed once per month. Tree wells shall be maintained around all trees and large shrubs growing in lawn and turf areas. All clippings shall be cleared from walkways, roadways, and other paved areas.

**Trees and Shrubs:** All trees and shrubs shall be pruned to provide safe passage, maintain a healthy and pleasing appearance, and prevent interference with pedestrian and vehicular traffic. Trees and shrubs shall be treated as necessary to prevent disease, fungus, and insect damage. Treatment of any abnormal and large infestation of insects or disease organisms that cause extensive damage to mature trees, or to a great number of trees, shall be performed as directed at an additional cost. Shrub beds shall be kept free of weeds, debris, sucker growth, and dead plant material.

**Irrigation:** Minimum irrigation shall be performed in a manner that promotes good appearance of landscaped areas. Irrigation shall include the watering of lawns, shrubs, tree, ground cover and containerized plants. Rubicon shall provide back-flow prevention devices approved by the San Francisco Department of Public Works on all hoses that are used for watering and all connections made to fire hydrants.

At the Facilities Manager's sole discretion, Rubicon shall be responsible for replacing or repairing damage caused to fire hydrants through Rubicon's use of any unapproved back-flow devices.

Rubicon shall also repair or replace, at the Facilities Manager's sole discretion, damage caused by Rubicon to sprinkler heads, valves, piping, fire hydrants, or any other equipment. Rubicon shall not be responsible for replacing or repairing any irrigation system components that wear out or fail as a result of normal use, unless directed to do so under a separate additional work agreement. The Facilities Manager shall provide water for irrigation and electricity for irrigation controllers, and shall be responsible for maintaining and repairing any underground piping located more than one foot from any sprinkler head.

**Weed Control In Paved Areas:** Weeds shall be removed from all asphalt and other paved areas. Herbicides shall be applied to prevent re-growth.

**Ground Cover:** Ground covers shall be kept free of noticeable weeds and debris. Ground covers shall be trimmed as necessary to maintain boundaries and to keep new growth away from trees, shrubs, utilities, etc.

**Policing, Debris Removal, and Storm Damage Cleanup:** All maintenance areas shall be policed at least twice per month to remove debris, leaves, paper, dead limbs, bark, pine needles, etc. Debris, silt, and vegetation shall be removed from gutters, curb inlets, and gratings. Debris from storms shall be removed as soon as possible.

**Playground, Sandboxes, Ball Fields, and Tennis Courts:** Playgrounds, sandboxes, ball fields, and tennis courts shall be kept free of weeds and debris. Sandboxes shall be raked once a week to remove foreign objects.

<u>Level 2 Task</u>	<u>Frequency / Year</u>
<i>Policing</i>	24
Mowing	24
Edging/Trimming	24
<i>Fertilization</i>	0
Shrub and Tree maintenance	as needed
Disease and Insect Control	as needed
Weed Control, Lawns	0
Storm Damage Cleanup	as needed
Hand Irrigation	36

These frequencies are average projected amounts of service that we feel will be required to provide the standard of maintenance described above. Depending on overall weather patterns and associated plant responses we may perform some tasks more times than shown and others less times than shown.

### Level 3 Services

**Mowing and Associated Cleanup:** Grass and weeds shall be cut 16 times per year. Prior to mowing, all trash and debris, including leaves, paper and other objects within the maintenance area shall be removed. Grass/weeds shall be maintained at a uniform height Of not less than 2" and not more than 5".

**Trees and Shrubs:** All trees and shrubs shall be pruned as required to encourage proper health and to maintain a pleasing appearance. Any extensive pruning or "cut back" shall be accomplished in the winter or during the dormant season. Ivy and ground cover shall be kept a minimum of eight inches (8") from shrubs and trees. Shrub beds shall be kept free of weeds, debris, sucker growth, and dead plant material.

**Ground Cover:** Ground covers shall be kept free of noticeable weeds and debris. Ground covers shall be trimmed as necessary to maintain boundaries and to keep new growth away from trees, shrubs, utilities, etc.

**Weed Control In Paved Areas:** Weeds shall be removed from all asphalt and other paved areas four times per year. Herbicides shall be applied to prevent re-growth.

**Policing, Debris Removal, and Storm Damage Cleanup:** All maintenance areas shall be policed at least twice per month to remove debris, leaves, paper, dead limbs, bark, pine needles, etc. Debris, silt, and vegetation shall be removed from gutters, curb inlets, and gratings. Debris from storms shall be removed as soon as possible.

**Playgrounds, Sandboxes, Ball Fields, and Tennis Courts:** Playgrounds, sandboxes, ball fields, and tennis courts shall be kept free of weeds and debris. Sandboxes shall be raked once a month to remove foreign objects.

**Irrigation:** Level 3 areas shall not include any irrigation

#### **Miscellaneous Specifications**

**Firebreak Requirements for Yerba Buena Island:** Certain areas on Yerba Buena Island shall be maintained as firebreaks in the following manner as directed by Peter J. Shembri, Lieutenant Division of Fire Prevention and Investigation and Michael T. Hennigan, Captain, San Francisco Fire Department.

All buildings under the care and management of the City of San Francisco shall have the areas around them cleared to a distance of a minimum of 30 feet. All roadways on City property shall have the areas on either side of them cleared to a distance of at minimum of 10 feet. The cleared areas shall be kept free of combustible materials such as dry weeds, shrubs, trash, and fallen debris from trees. Normal leaf and pine needle accumulation shall not be removed. Weeds shall be cut or mowed to a maximum height vegetation remains green throughout the year and presents little or no fire hazard shall be left alone. Any vegetation obstructing roadways or growing against buildings shall be removed as directed by the Facilities Manager. Removal of any trees over 4 inches in diameter or over 12 feet high within the fire break areas shall only be performed as additional work under a separate agreement.

**Mowing for Fire Protection at Housing Areas on Treasure Island:** Mowing of grass and weeds in housing areas designated as H-1, H-2, and H-3 on Treasure Island, shall be an indefinite quantity item, performed only when specifically directed to do so by the Facilities Manager. For each order, the Facilities Manager shall specify in writing what areas shall be mowed and when they shall be mowed. The Facilities Manager may choose to order mowing for fire protection with or without grass/weed pick-up and removal. Separate unit prices for these options shall be

provided. Rubicon shall be prepared to perform mowing work as often and as extensively as is requested by the Facilities Manager.

**Sea Wall Requirements:** The sea wall is defined as the flat area adjacent to the rock revetment that comprises the perimeter of Treasure Island. From the end of Palm Avenue at 9<sup>th</sup> Street the sea wall runs around the housing area and returns to the harbor behind Building 1. Weeds in this area shall be kept at a height of 4 inches or less by means of mechanical and chemical control. Trash shall be removed once per month. Any debris that occurs in other areas along the sea wall shall be the responsibility of others unless negotiated as extra work separate from this agreement.

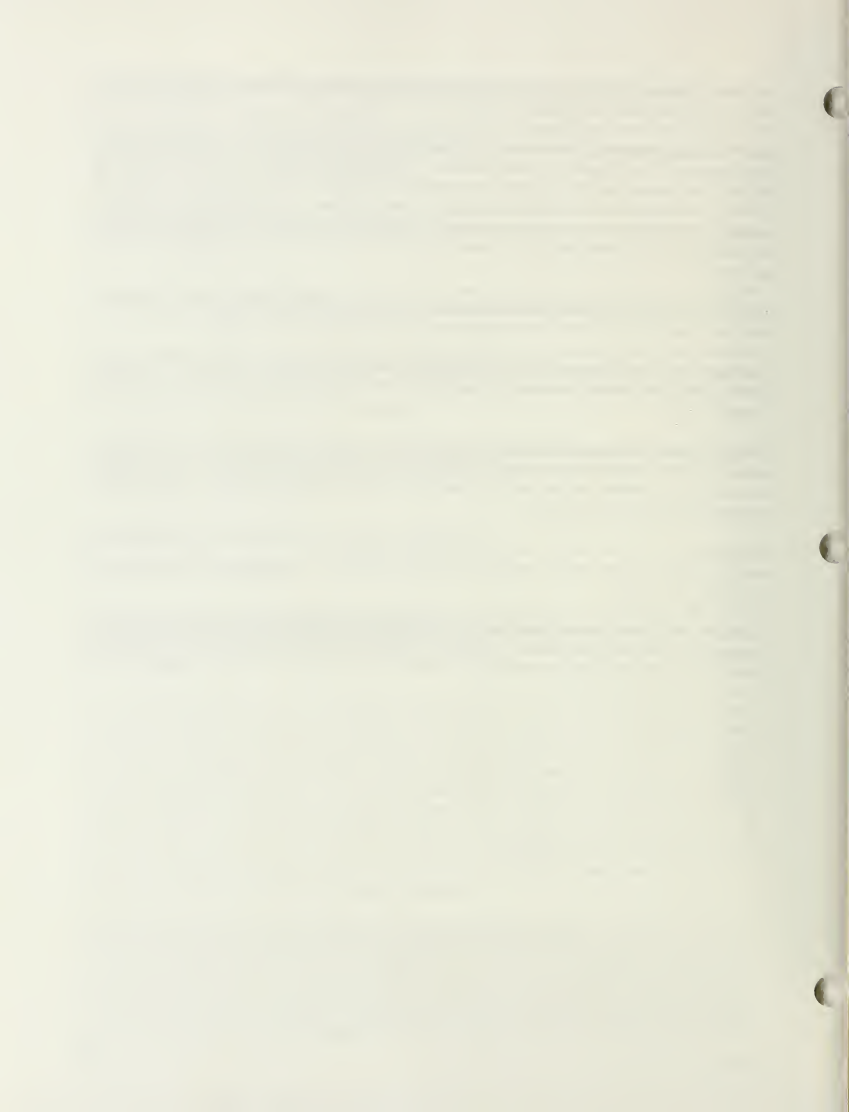
**Storm Drains Requirements for Both Islands:** Storm drains and V ditches shall be cleaned as often as necessary during the rainy season in order to keep them clear of debris.

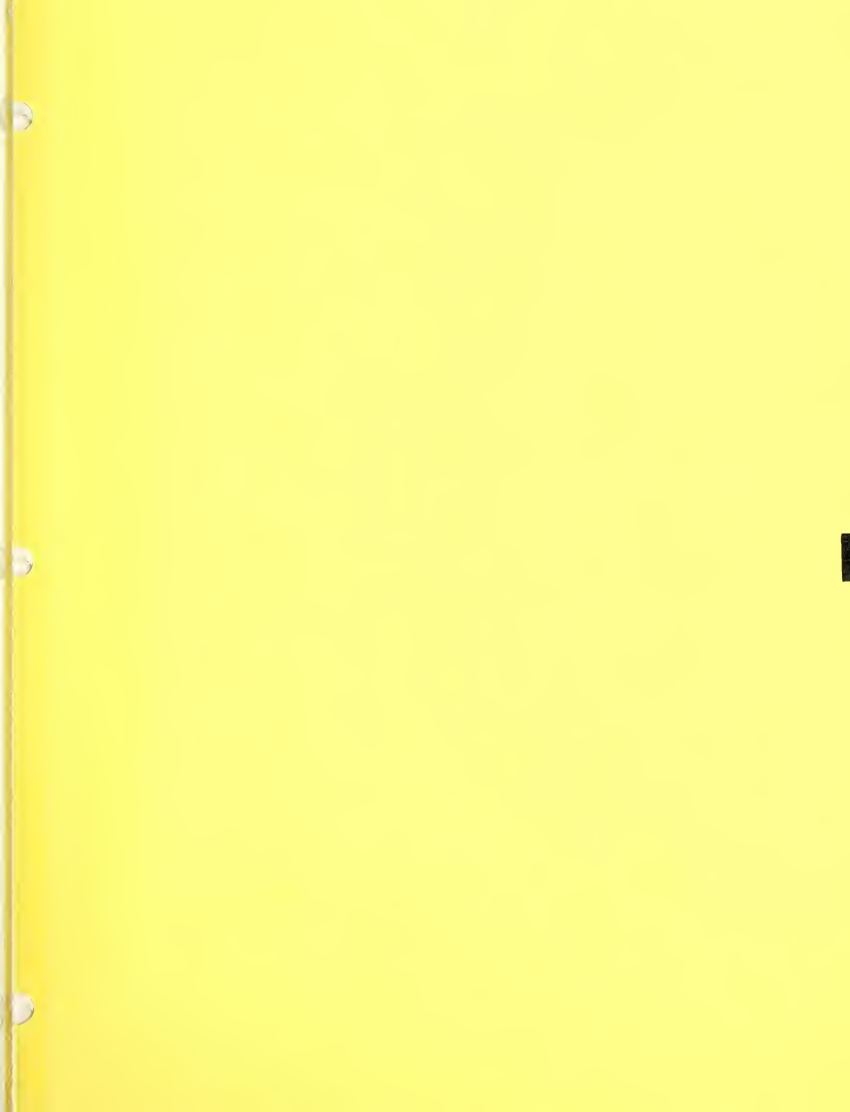
**Garbage Cans And Tourist Stop at Front Gate:** Garbage cans shall be emptied 3 times per week. The tourist parking area and sidewalk at the front gate shall be swept or blown Monday through Friday.

**Garbage Cans On Treasure Island:** Garbage shall be removed from trashcans at designated sites on Treasure Island twice per week. The number of cans serviced shall not exceed twelve, unless otherwise directed by the Facilities Manager under a separate agreement. Liners shall be replaced in trashcans as necessary.

**Poison Oak:** Wherever located, poison oak shall be sprayed with herbicide twice per year. An aggressive effort will be made to locate and eradicate poison oak near housing, playgrounds, and other high traffic areas.

**Reservoir and Pump Station Maintenance on Yerba Buena Island:** Reservoir roofs shall be cleaned of debris once per week. Debris and vegetation shall be cleared from reservoir and pump station walls and within fence lines as needed to assure access to facilities and prevent any invasive damage to structures.









**AGENDA ITEM**  
**Treasure Island Development Authority**  
*City and County of San Francisco*

**Subject:** Resolution approving a gift in honor  
Robert Mahoney from the John Stewart Company  
for a landscaping project on Perimeter Path.

**Agenda Item 16**

**Contact Person/Phone:** Marianne Conarroe  
(415) 274-0660

**Meeting Date:** 3/29/2001

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**SUMMARY OF PROPOSED ACTION:**

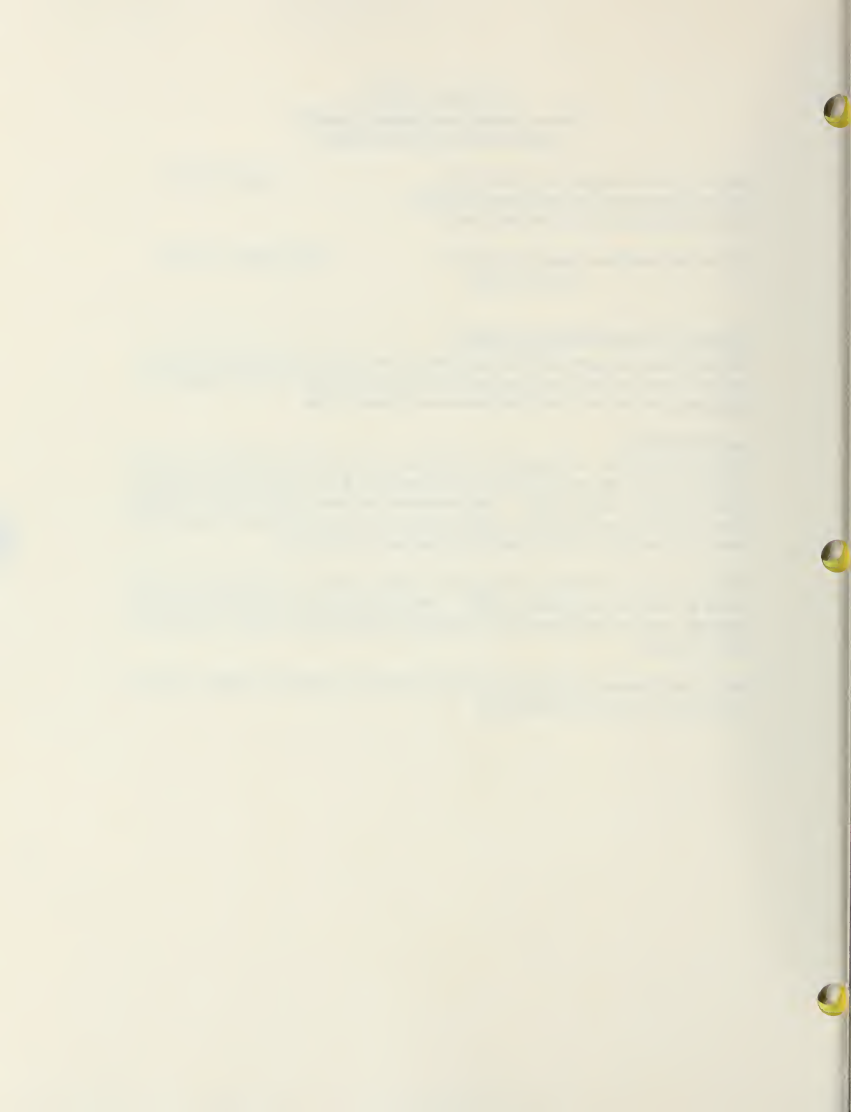
This item seeks the approval by the Authority to accept a gift in honor Robert Mahoney, Deputy Director and Facilities Manager for TIDA from the John Stewart Company for a landscaping project on the northwest entrance to Perimeter Path.

**BACKGROUND**

Through the diligence of Deputy Director Mahoney, the Authority amended the Land and Structures Lease with the U.S. Navy to add Perimeter Path to the leased premises for Treasure Island in March 2000. The amendment allowed public access to Perimeter Path, a mile long path along the northern perimeter of Treasure Island. Perimeter Path, closed to all vehicles, is now be used for recreational purposes only.

The John Stewart Company has requested to donate a gift of a landscaped area at the northwest entrance to Perimeter Path. The landscaped area will include benches, shrubbery, stone animal figures and a metal plaque dedicating the public viewing area to Robert Mahoney.

Regular maintenance of the public viewing area will be provided by Rubicon as part of its existing contract with the Authority.



FILE NO. \_\_\_\_\_

RESOLUTION NO. \_\_\_\_\_

[Acceptance of Gift in Honor of Robert Mahoney Related to Landscaping at the Northwest Entrance to Perimeter Path]

**Resolution Authorizing the Acceptance of Landscaping from the John Stewart Company**

WHEREAS, On May 2, 1997, the Board of Supervisors of the City and County of San Francisco (the "Board") passed Resolution No. 380-97, authorizing the Mayor's Treasure Island Project Office (the "Project") to establish a non-profit public benefit corporation known as the Treasure Island Development Authority (the "Authority") to act as a single entity focused on the planning, redevelopment, reconstruction, rehabilitation, reuse, and conversion of the Base for the public interest, convenience, welfare, and common benefit of the inhabitants of the City and County of San Francisco; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, which amended Section 33492.5 of the California Health & Safety Code and added Section 2.1 to Chapter 1333 of the Statutes of 1968 (the "Act"), the California Legislature (i) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the Board, and (ii) with respect to those portions of the Base which are subject to the Tidelands Trust, vested in the Authority the authority to administer the public trust for commerce, navigation, and fisheries as to such property; and

WHEREAS, The Board approved the designation of the Authority as a redevelopment agency for Treasure Island in 1997; and,

WHEREAS, Under the Treasure Island Conversion Act of 1997, the California Legislature (i) designated the Authority as a redevelopment agency under California redevelopment law with authority over the Base upon approval of the City's Board of Supervisors, and, (ii) with respect to those portions of the Base which are subject to the

The first part of the report deals with the general situation of the country and the progress of the war. It is a very interesting and informative account of the early stages of the conflict.

The second part of the report deals with the military situation. It gives a detailed account of the various campaigns and battles fought during the year. The author's knowledge of military affairs is evident throughout the report.

The third part of the report deals with the political situation. It discusses the various political parties and their policies, and the role of the government in the war effort. The author's analysis of the political situation is very sound and well-informed.

The fourth part of the report deals with the economic situation. It discusses the various economic problems facing the country, and the measures taken by the government to deal with them. The author's analysis of the economic situation is very thorough and well-researched.

The fifth part of the report deals with the social situation. It discusses the various social problems facing the country, and the measures taken by the government to deal with them. The author's analysis of the social situation is very well-informed and well-researched.

Tidelands Trust, vested in the Authority the authority to administer the public trust for commerce, navigation and fisheries as to such property; and

WHEREAS, The Tidelands Trust prohibits the sale of trust property into private ownership, generally requires that Tidelands Trust property be accessible to the public and encourages public-oriented uses of trust property that, among other things, attract people to the waterfront, promote public recreation, protect habitat and preserve open space; and

WHEREAS, on April 15, 1998, the Authority adopted a resolution regarding the acceptance of gifts and other charitable contributions to the Authority in accordance with Government Code section 18944 which requires that (I) all Gifts be used solely for the official business of the Authority and, (ii) that the Authority, in its sole discretion, shall determine the specific official or officials who shall use the Gift, provided, however, that a donor may identify a specific purpose for the Authority's use of the Gift, so long as the donor does not designate the specific official or officials who may use the Gift; and

WHEREAS, the John Stewart Company wishes to donate the materials for a landscaped viewing area to the Treasure Island Development Authority to be located at the northwest entrance to Perimeter Path, and

WHEREAS, the landscaped viewing area shall include shrubbery, flowers, benches and stone animal figures for the public to enjoy the view of San Francisco Bay and the Golden Gate Bridge, and

WHEREAS, Robert Mahoney has been the driving force for the Treasure Island Development Authority in assuring public access to Perimeter Path, and

WHEREAS, the gift from the John Stewart Company shall be in dedication to Robert Mahoney with the placement of a metal plaque in the landscaped viewing area; now therefore be it

RESOLVED, That the Authority hereby directs the Executive Director to accept the gift of the landscaped viewing area by the John Stewart Company.

1. The first part of the document discusses the importance of maintaining accurate records of all transactions and activities. It emphasizes that this is crucial for ensuring transparency and accountability in the organization's operations.

2. The second part outlines the various methods and tools used to collect and analyze data. This includes both traditional manual methods and modern digital technologies, highlighting the benefits of each approach.

3. The third part focuses on the role of human resources in the data collection process. It discusses how training and support for staff can improve the quality and reliability of the data collected.

4. The fourth part addresses the challenges faced in data collection and analysis. These include issues such as data quality, consistency, and the integration of data from different sources.

5. The fifth part provides recommendations for improving the data collection process. These include suggestions for standardizing procedures, improving communication, and utilizing advanced data analysis techniques.

6. The final part of the document concludes with a summary of the key findings and a call to action for the organization to implement the recommended changes.

**CERTIFICATE OF SECRETARY**

I hereby certify that I am the duly elected and acting Secretary of the Treasure Island Development Authority, a California nonprofit public benefit corporation, and that the above resolution was duly adopted and approved by the Board of Directors of the authority at a properly noticed meeting on March 29, 2001.

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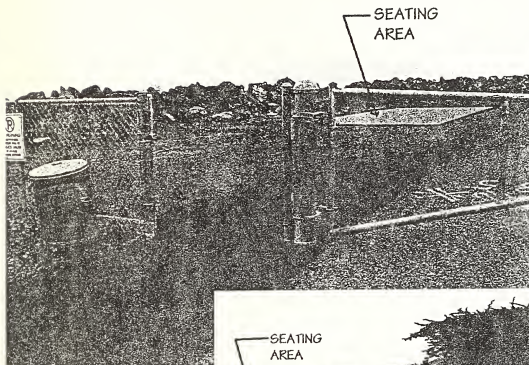
John Elberling



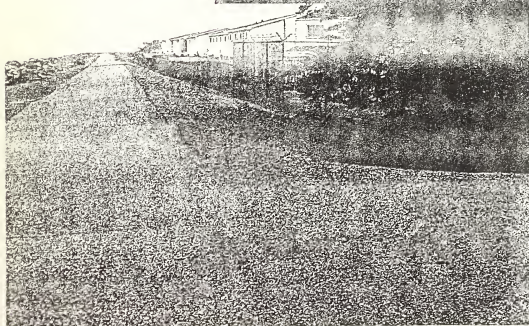
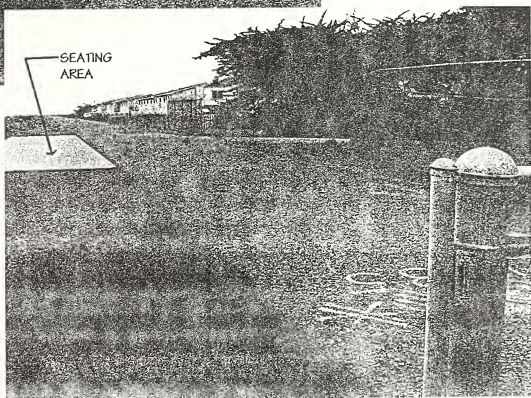


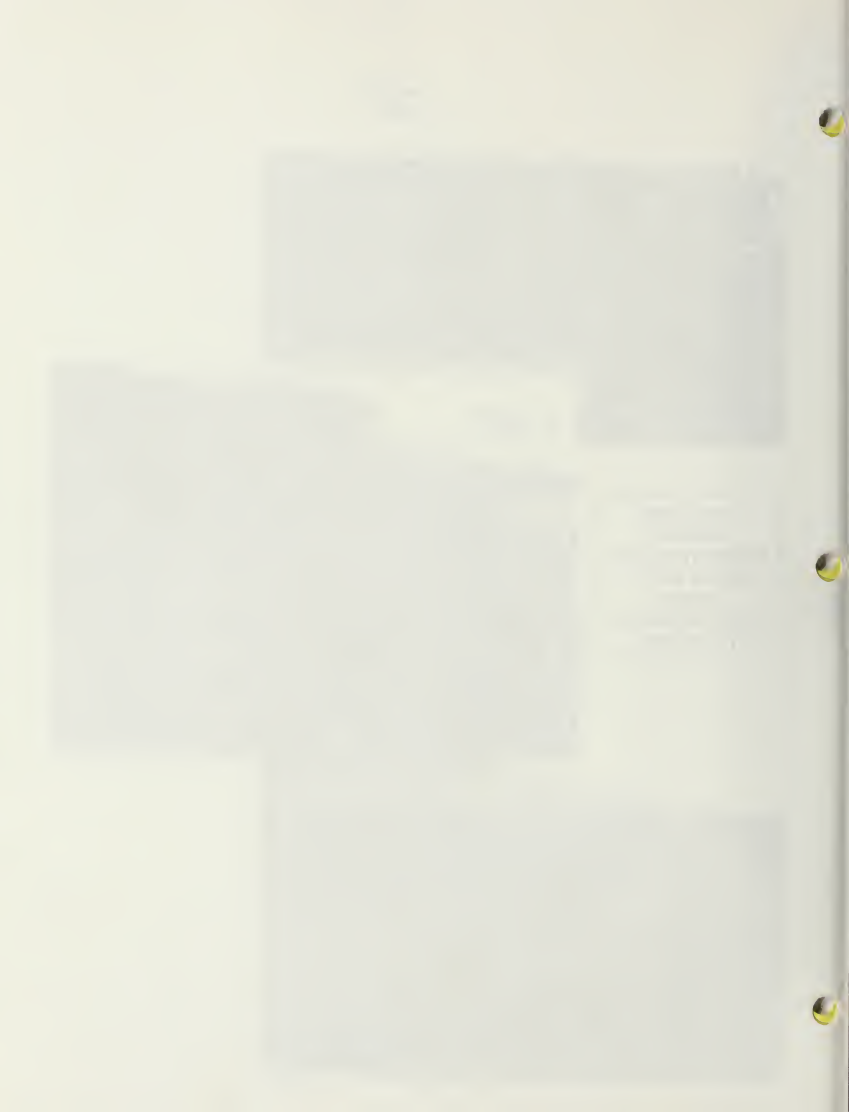






LOCATION  
PHOTOS:  
PERIMETER PATH  
ENTRY AT 9<sup>TH</sup>  
STREET  
AND AVENUE OF  
THE PALMS



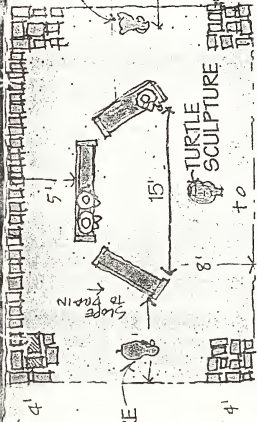




EXISTING AC WALK/DRIVE

INSCRIBED STONES

STONE PAVERS - SAWCUT AC EDGE



HIPPO SCULPTURE

TURTLE SCULPTURE

TOAD SCULPTURE

3 WOOD BENCHES (60 L. ea.)  
(ATTACH TO CONC. FOOTING SECURITY?)  
DECOMPOSED GRANITE (GRAY) 2" MIN.  
COMPACTED ON AGGREGATE BASE (4")

STONE PAVERS (COBBLE STONES)

FLUSH

MINOR. USE

(E) LOW POINT + -1.5'

SEATING AREA

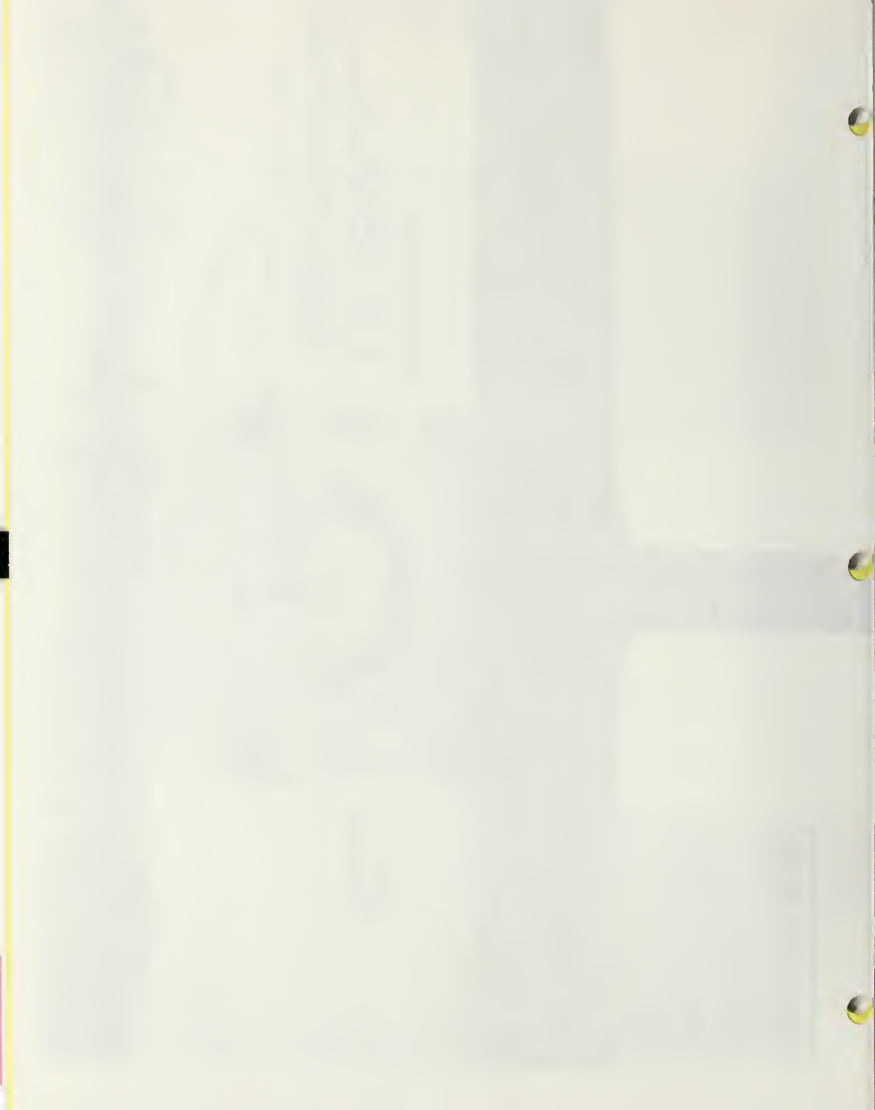
TREASURE ISLAND

CONSTRUCTION NOTES

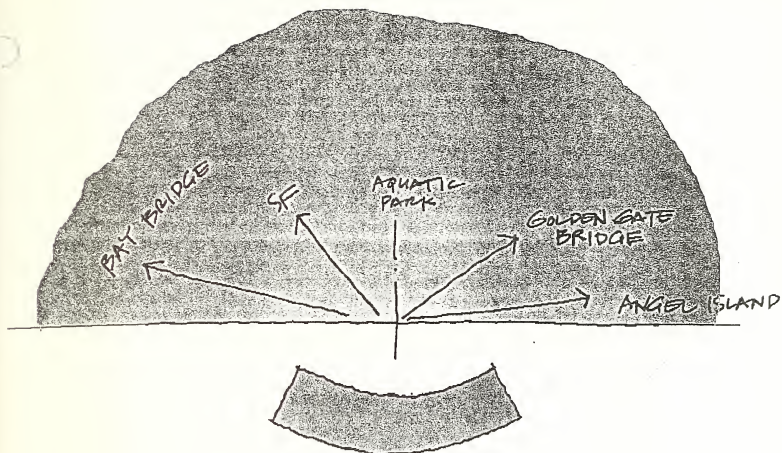
1" = 8'

MITG

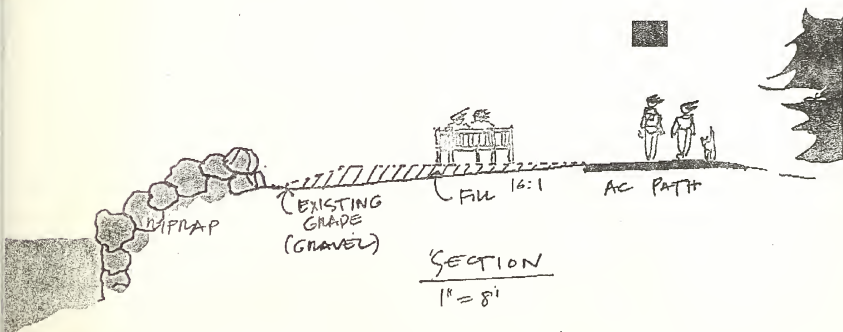
1/10/1 NORTH







VIEWS ↘ NORTH



W.I.G

SEATING AREA  
TREASURE ISLAND







# **NORTHERN CA**

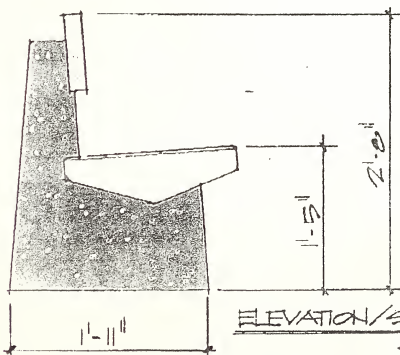
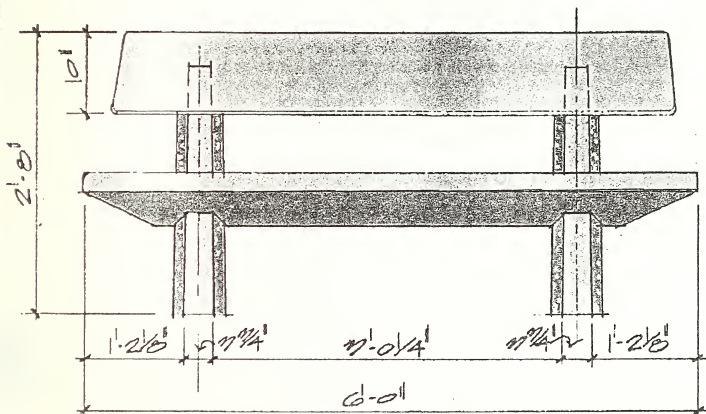
8173 Wells Avenue  
Newark, CA 94560  
(510) 787-0889  
(800) 431-3811  
FAX (510) 788-7428

# **SOUTHERN CA**

11010 Live Oak  
Fontana, CA 92335  
(714) 350-9080  
(800) 821-1120  
FAX (714) 350-9032

# **SOUTHEAST**

100 Lee's Mill Road  
Forest Park, GA 30050  
(404) 763-6000  
(800) 233-0332  
FAX (404) 762-9331



**ELEVATION/SIDE VIEW**

NOTE: 1" = 1'-0"

**SHEET TITLE** SCOM PRECAST BENCH.

**DRAWN BY** NS.

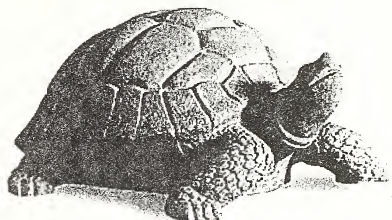
**PROJECT**

**DATE** 1002

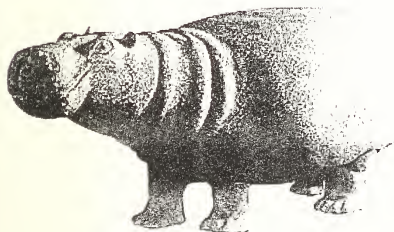


## TURTLE

SIZE: 36" L. x 31" W. x 16" H.  
WEIGHT: 475 LBS  
PRICE: \$495.00 net



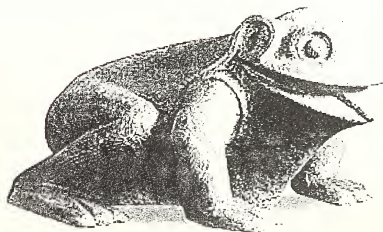
## HIPPO



SIZE: 48" L. X 24" W. X 21" H.  
WEIGHT: 735 LBS  
PRICE: \$625.00 net

## TOAD

SIZE: 38" L. X 36" W. X 20" H.  
WEIGHT: 585 LBS  
PRICE: \$495.00 net







**Minutes of Special Meeting**  
**Treasure Island Development Authority**  
**March 29, 2001**

1. Call to Order: 9:07 AM in Room 400 in City Hall

Roll Call Present: John Elberling, Vice-Chairman

William Fazande

Susan Po-Rufino

Doug Wong

Anne Halsted

James Morales (9:10 AM)

Gerald Green (9:15 AM)

Ms. Halsted stated she has resigned due to a new position at BCDC, which is in conflict with her TIDA role. Ms. Halsted thanks the commissioners and wishes them the best.

2. Approval of Minutes: The minutes of February 14, 2001 were approved 6-0

3. Communications: London Breed, Commission Secretary, reported that there were no communications.

4. Director's Report given by Annemarie Conroy, Executive Director for TIDA.

Public Access - Ms. Conroy reports that there are 65 weddings and 35 private parties scheduled this year, including Golden Gate Women's Soccer, Berkeley All Blues Women's Rugby. The Armenian National Committee is holding annual dinner, SF Art Institute is holding a fundraiser in Bldg. 1 in March and the Mayor's Office continues to facilitate senior bus tours.

Environmental Cleanup - Ms. Conroy stated that the project office continues to work with the Navy and DTSC to release units for TIHDI and John Stewart Company. She reports there is \$30 million in the upcoming budget from the US Dept. of Defense for TI environmental cleanup.

Short Term Leases - Ms. Conroy stated that there are no new short-term leases.

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# Introduction

The purpose of this study is to investigate the effects of various factors on the performance of a system.

The study is organized as follows:

- 1. Literature Review
- 2. Methodology
- 3. Results and Discussion
- 4. Conclusion

1. Literature Review

The literature review covers the following topics:

1.1. System Performance

1.2. Factors Affecting Performance

1.3. Previous Studies

1.4. Research Gaps

1.5. Summary of Findings

1.6. Conclusion

The literature review shows that there is a need for a more comprehensive study on the effects of various factors on system performance.

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Bay Bridge - Ms. Conroy reported that State Senator Don Perata has called for a hearing on whether the eastern span should be retrofitted or replaced due to the increased \$1 billion in costs.

Treasure Island Community - Ms. Conroy stated that the Villages have approved rooftop installation of wireless services for residents. Job Corps is going to open a small grocery store that will be available to Island residents. Ms. Conroy reported that there is an increase in Muni services on Treasure Island and an increase in police presence on the buses. New buses coming on line will have cameras and will be assigned to the 108 line.

Citizen Advisory Board - Ms. Conroy introduces Karen Knowles-Pierce, chair of the Citizen Advisory Board.

TIHDI - Ms. Conroy reports that Mr. & Mrs. John Stewart, of the John Stewart Company, and Bob Mahoney, TIDA Deputy Director will be honored at TIHDI's annual fundraiser April 26<sup>th</sup>.

Finance Report - Ms. Conroy introduces Eila Arbuckle, Director of Finance. Ms. Arbuckle reported on the current budget stating that we are on target for this year. We have two classes of revenues: non-city departments and city departments. Ms. Arbuckle will present a proposed budget for next year at the next Authority meeting.

Legislation /Hearings Affecting TI: Ms. Conroy reported that Chris Daly, District 6 Supervisor, has called a hearing on the implementation of Prop. K and has asked for information on the amount of funds & staff resources expended on the RFQ process. The Board of Supervisors approved the Cooperative Agreement with the Navy on March 26, 2001. The sublease with the Sheriff for the Brig will go before the Board of Supervisors on Monday, April 9, 2001.

Mr. Green moved to call item 16 out of order. Ms. Po-Rufino seconded. Approved 6-0

16. A resolution approving a gift in honor of Robert Mahoney, Deputy Director and Facilities

Manager, from the John Stewart Company for a landscaping project on the perimeter path.

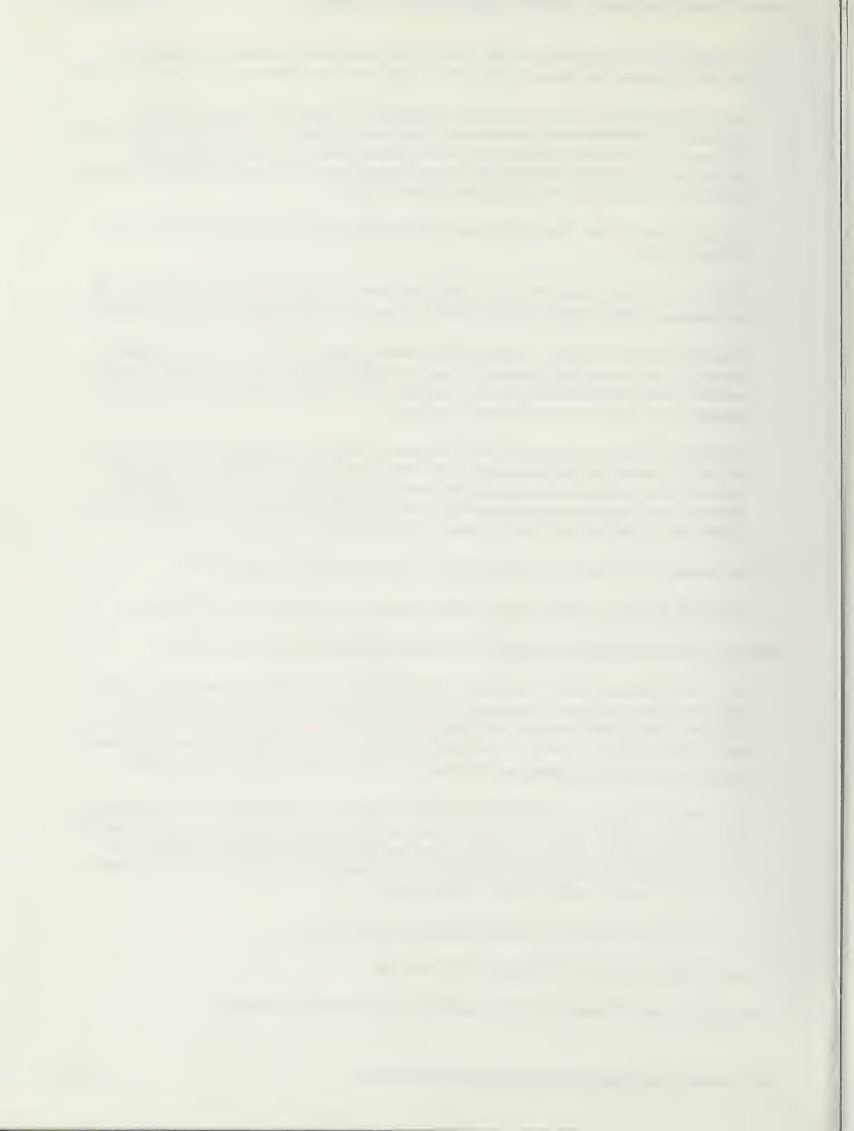
Ms. Conroy speaks of Bob's contributions and dedication to the Island, the community and the Project and pays tribute to his character. She introduces John Stewart of the John Stewart Company. Mr. Stewart reports on the Friends of Bob Mahoney Fund that he has set up and also pays tribute to all of the work Bob has done for the Island and the Project. He states the project will be a cityscape view sitting area. We hope to have the project done by the April 26<sup>th</sup>.

Ms. Sherry Williams, Executive Director of TIHDI, pays tribute to Bob also for all his efforts to help TIHDI get off the ground. The Mayor will hand the awards out on the fundraiser on the 26<sup>th</sup>. Walter Park, Mayor's Office on Disability, praises Bob for his hard work and integrity. Ms. Halsted expressed her appreciation for the work that Bob Mahoney has done for the Authority. Noah Griffin recites a poem in honor of Bob Mahoney.

Mr. Wong moved approval. Mr. Green seconded. Approved 6-0

5. General Public Comment - No General public comment.

6. Ongoing Business by Directors and Introduction of New Business by members:





Mr. Elberling inquired about the status of the RFQ.

Mr. Proud reported that consultant responses were received on February 21 and a review committee was convened. Mr. Green expressed concern over whether we have looked at all the alternatives. Mr. Cohen states an extensive discussion about the RFQ is not permitted under the Sunshine Ordinance since this topic is not listed as a separate agenda item.

Mr. Wong moved for a closed session to discuss the RFQ at the next TIDA meeting. Mr. Green seconded.

Approved 6-0

7. A resolution approving a Contract with URS for \$300,000 to prepare a programmatic Environmental Impact Report for former Naval Station Treasure Island.

Mr. Proud stated that the conveyance with the Navy and TIDA requires 2 environmental actions to occur. 1) The U.S. government has to satisfy NEPA and prepare an environmental impact statement. 2) A document complying with CEQA must be prepared to transfer the property from the Navy. A combined NEPA/CEQA did not work, therefore the Navy will satisfy NEPA and the Authority will satisfy CEQA. The programmatic EIR is intended to accomplish several things. 1) Facilitate conveyance from the Navy to the Authority; 2) to allow for Marina expansion; 3) Adopt a preliminary development plan; 4) Seek grant funds for causeway upgrade; and 5) Planning and implementing a ferry landing. The selection committee picked URS from three responses. The consultant will review the preliminary EIR, execute corrections, and prepare a new draft EIR that leads to a final EIR for the conveyance of Treasure Island. The work schedule is 15 months, which would lead to the final EIR in the spring of 2002.

Mr. Elberling expressed concerns about the scope of work.

Denise Herck from URS stated that the alternatives contained in the Navy's draft would be the same ones we would carry through. Mr. Elberling asked if it would be appropriate to bring it up on calendar at a future date. Discussion follows regarding the revisiting of alternatives.

Mr. Green moved approval. Ms. Po-Rufino seconded. Approved 6-0

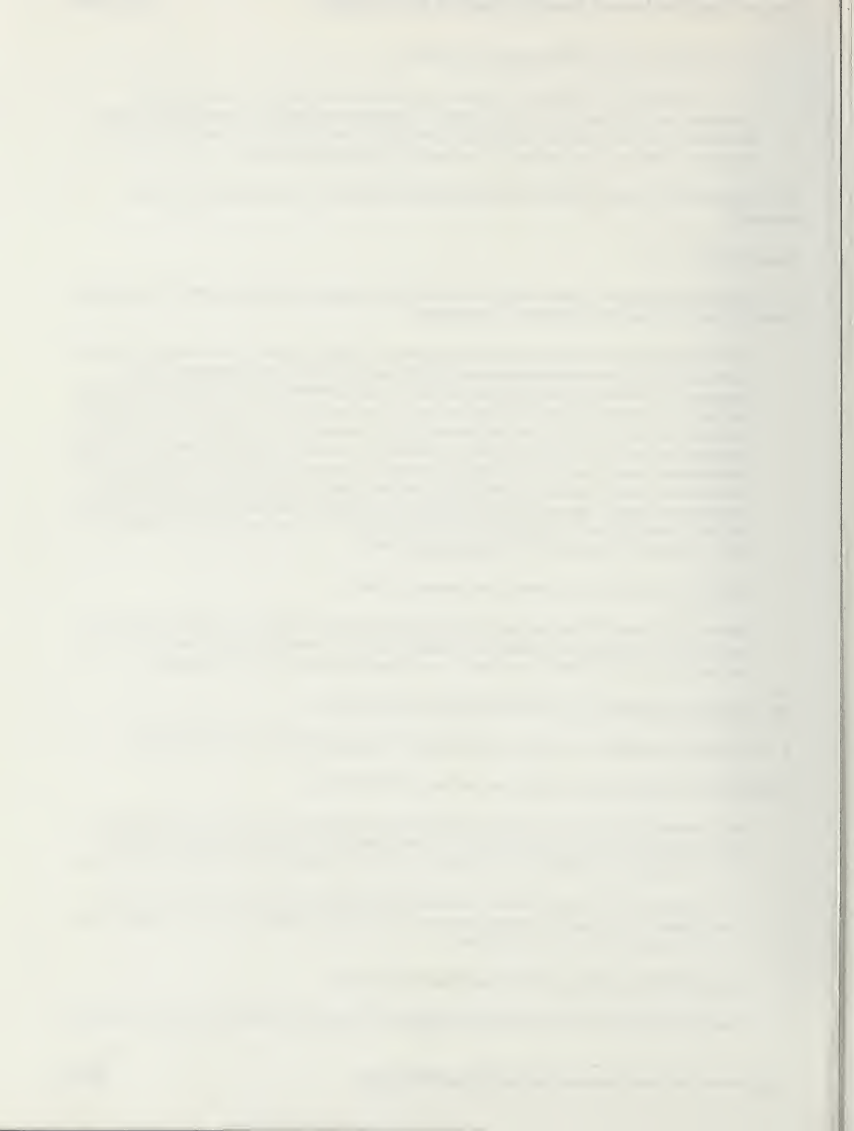
8. A Resolution accepting five murals by artist Miguel Covarrubias from the 1939 Pan-Pacific Exposition on Treasure Island as gifts from the Port of San Francisco.

Ms. Rummelsburg reports the mural would be stored in Bldg. 449, which is controlled by the Airport Museum. It is a safe place, access and temperature is controlled, and some humidity control. She gives a little history of the murals. They will eventually be exhibited for the public.

Ms. Debra Lehane, Program Director for the Arts Commission, discusses the role of the Arts Commission, i.e., restoration and conservation. MOU with the Authority will be occurring. The Arts Commission is ready to move ahead.

Adriana Williams talks about the importance of the murals.

Luis De La Garza, scholar of Mexican art discusses Covarrubias and the uniqueness of the murals.



Mr. Fazande moved approval. Mr. Green seconded. Approved 6-0

9. A resolution authorizing the Executive director to extend a month-to-month sublease for Building 99 with Island Creative management, Inc.

London Breed, Development Specialist, stated that staff would like the Authority to approve the sublease on the same terms as the original sublease for an additional 1-year term. Beyond Feb. 28, 2002 it would require additional Authority approval.

Mr. Morales moved approval. Mr. Wong seconded. Approves 6-0

10. A resolution authorizing the Executive Director to extend a month-to-month sublease for Bldg. 62 with W. Wong Construction Company, Inc.

Ms. Breed stated that staff would like the Authority to approve this on the same terms as the original sublease for an additional 1-year term.

Mr. Fazande moved approval. Ms. Po-Rufino seconded. Approved 6-0

11. A resolution authorizing the Executive Director to execute an Amendment to the Land and Structures Master Lease with the U.S. Navy to add 35,000 square feet of Paved Property.

Mr. Proud stated that TIHDI requested up to 12,000 square feet of office space to use for TIHDI member organizations. It has been difficult to find space for them. We would lease the area to TIHDI for modular offices and training facilities. They will landscape the area.

Sherry Williams, TIHDI, stated the land is needed for increasing support service needs.

Jim Fagler discusses the design and Laura Weir discusses support services. Nella Gonzalez from Catholic Charities discusses services they provide to 64 families.

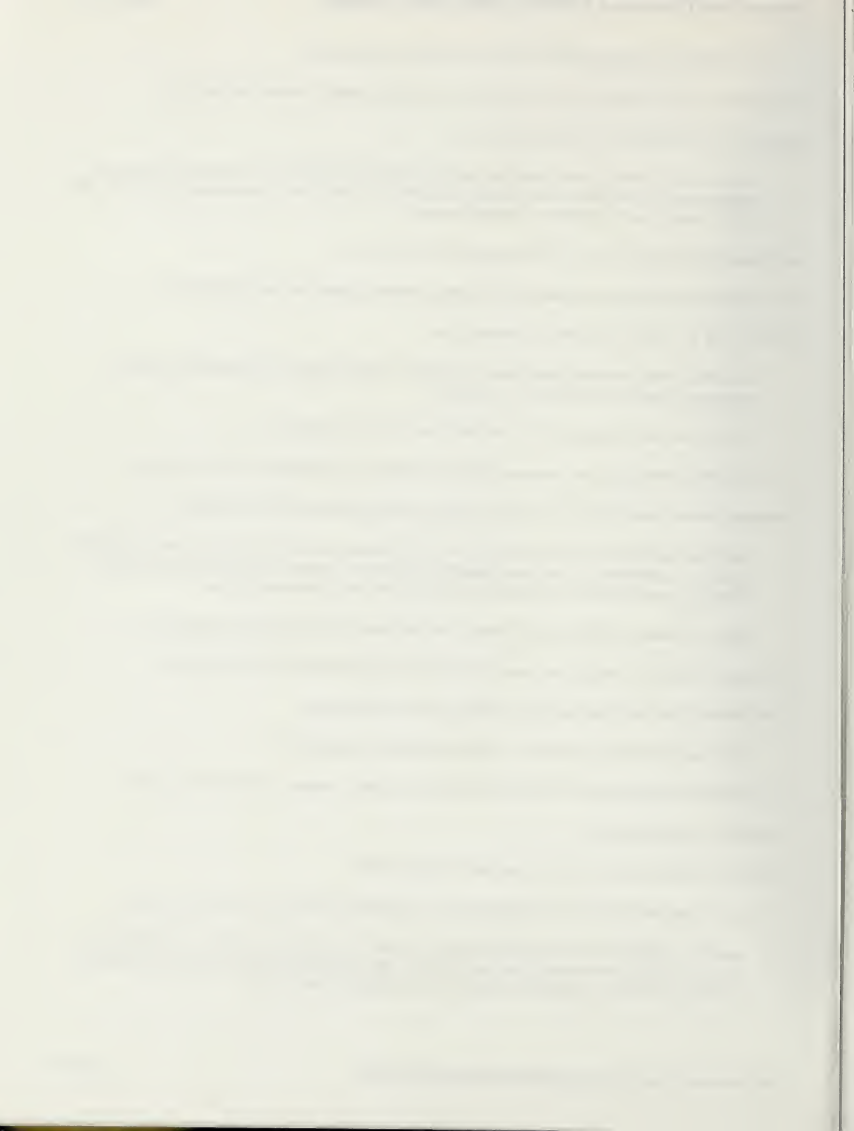
Mr. Fazande moved approval. Mr. Morales seconded. Approved 6-0

12. A resolution authorizing the Executive Director to execute a sublease with TIHDI for 35,000 square feet of paved property.

Mr. Morales approval. Ms. Po-Rufino seconded. Approved 6-0

13. A resolution authorizing the Executive Director to execute a Contract with Toolworks, Inc. a

member organization of the Treasure Island Homeless Development Initiative, and a California Public Benefit Corporation, for an amount not to exceed \$125,000 to provide janitorial and other building services for the period of March 2001 through February 2002.



Ms. Arbuckle stated that Toolworks has been providing services janitorial services for Bldg. 1 and the event venues for the past three years. She describes the scope of their duties.

Ms Donna Feingold discusses the purpose of Toolworks and thanks everyone for the support.

Mr. Morales moved approval. Mr. Wong seconded. Approved 6-0

14. A resolution authorizing an amendment to the sublease with the John Stewart Company to expand the "San Francisco Essentials" preference category to include licensed health care professionals.

Mr. Proud stated that on March 17, 1999 the Authority entered into a sublease with JSCo for 766 housing units on TI. On February 23,2001, we received a request from the Hospital Council of Northern and Central California to expand the 35% preference category for essential personnel to include certified or licensed hospital personnel. We also received a request from Supervisor Daly to include licensed personnel. JSCO is willing to amend the sublease to add such qualified personnel. He discusses examples of qualified licensed medical personnel.

Discussion of the definition of licensed health care professionals' follows.

Mr. Elberling asked for a report breaking down how the 35% allotment has been used and indicating the number of children to be presented in the future.

Mr. Cohen, City Attorney, commented that only 1 of every 3 turnover units would be offered for the first refusal category.

Mr. Fazande moved approved. Mr. Wong seconded. Approved 6-0

15. A resolution authorizing the Executive Director to execute a contract with Rubicon

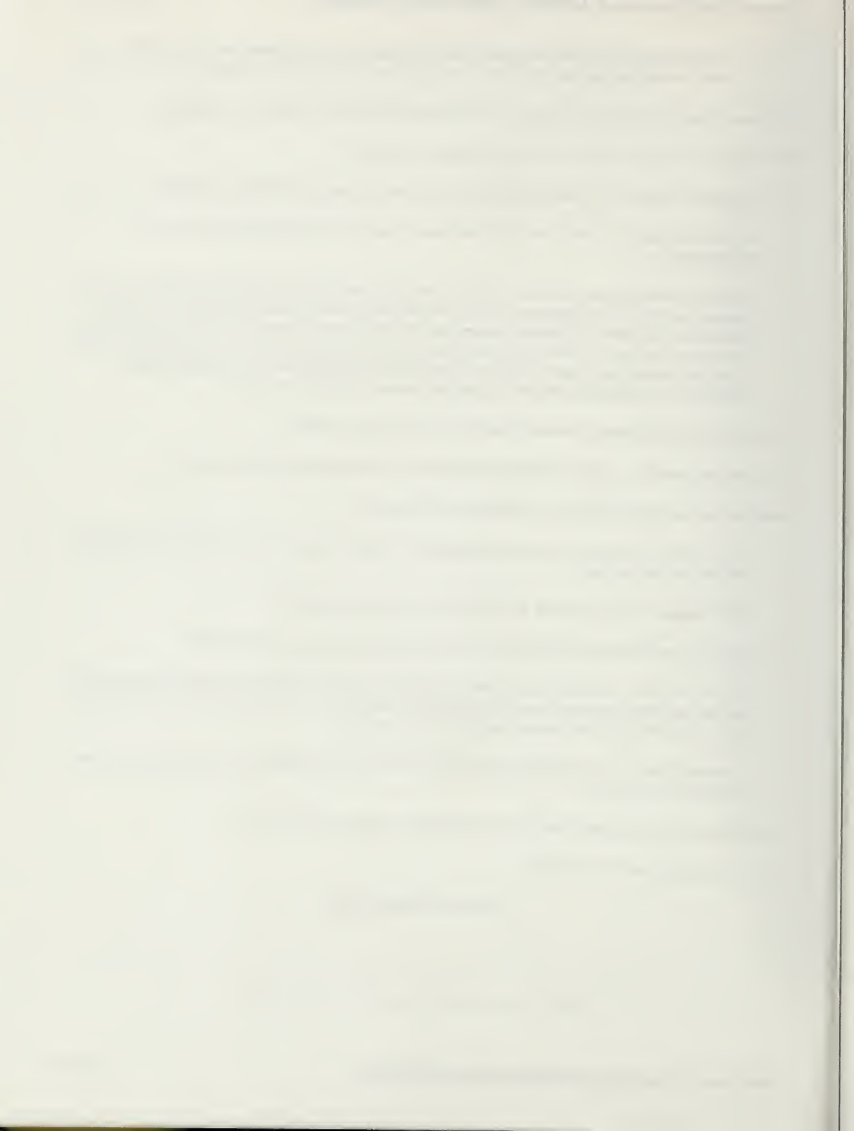
Enterprises, Inc., a member organization of the Treasure island Homeless Development Initiative, to provide landscaping and grounds maintenance services for an amount not to exceed \$600,000 and we ask that this item be continued to the next meeting.

London Breed, Commission Secretary, reported that staff recommends continuation of this item until the next meeting.

Mr. Wong moved to continue Item 15. Ms. Po-Rufino seconded. Approved 6-0

17. Meeting adjourned at 11:06.A.M.

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